APPENDIX

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-100

ROY D. GARNER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 9, 1974
CERTIORARI GRANTED FEBRUARY 18, 1975

IN THE

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Certificate By The Clerk

I, Emory G. Hatcher, Clerk of the above entitled Court, hereby certify the documents listed herein, together with the other listed items, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above entitled case.

Dated and Signed: February 9, 1971.

NOTICE OF MOTION AND MOTIONS (1) FOR SEVERANCE AND SEPARATE TRIAL; (2) FOR COPY OF TRANSCRIPT OF GRAND JURY PROCEEDINGS; (3) AFFIDAVIT OF ALAN SALTZMAN; (4) POINTS AND AUTHORITIES; (5) TO COMPEL GOVERNMENT TO DISGORGE EVIDENCE FAVORABLE TO DEFENDANT RE GUILT OR INNOCENCE

In the United States District Court, Central District of California.

UNITED STATES OF AMERICA, Plaintiffs, vs. CLARENCE A. SWANK; ROY D. GARNER, et al., Defendants.

Criminal No. 4790(F).

[FILED NOVEMBER 26, 1969]

TO THE UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on December 18, 1969, at 10:00 o'clock A.M., as previously orally noticed in Court, before the HONORABLE WARREN J. FERGUSON, the Defendant, ROY D. GARNER, will, through counsel, move the Court for orders as follows:

(1) Directing a severance and separate trial as to the Defendant, ROY D. GARNER, from the other Defendants;

(2) Directing the United States Attorney to have transcribed all grand jury proceedings leading up to the instant indictment and to provide a copy thereof to counsel for the Defendant, ROY D. GARNER;

(3) Directing the U. S. Attorney to disclose to counsel for ROY D. GARNER all evidence known to him favorable to the Defendant on the issue of his guilt or innocence.

The within motions are based on the within affidavit

attached hereto, the Points and Authorities attached hereto, the records and files in the above-entitled cause, and any and all other matters which may be presented prior to or at the time of the hearing of said motions.

Respectfully submitted,

Alan Saltzman

Attorney for Defendant

Affidavit of Alan Saltzman

State of California)
) ss.
County of Los Angeles)

ALAN SALTZMAN states under oath the following:

1. That he is an attorney retained to represent the Defendant, ROY D. GARNER, in the within action:

RE: SEVERANCE MOTION.

Your affiant is informed and believes and thereon alleges that the Defendant, ROY D. GARNER, would be placed in a dilemma so far as presenting his case to the jury is concerned if he were tried with any of the other co-Defendants because of the statements and conduct of the said co-Defendants, and because of the fact that it might become encumbant upon counsel for any co-Defendant to argue his client's innocence based on the guilt of ROY D. GARNER, which would operate to the obvious prejudice of ROY D. GARNER, and that, therefore, fairness demands that the moving party, ROY D. GARNER, be tried

separately.

Your affiant is further informed and believes and thereon alleges that there are acts, declarations and conduct which the Government proposes to offer during the course of the trial which would be admissible only against one of the co-Defendants, and that it would be impossible for the jury to consider said evidence only against the declarant or actor.

Your affiant further believes that certain co-Defendants have made certain admissions or statements to witnesses which would be hearsay as to the Defendant, ROY D. GARNER, but that the jury would not be able to exclude such admissions by one co-Defendant when considering the guilt or innocence of the Defendant, ROY D. GARNER.

Your affiant has been informed by the U. S. Attorney that there are certain statements which have been made by one or more of the Defendants which implicate Defendant, ROY D. GARNER . . .

[At the time of the preparation of this appendix, the subsequent page of the Affidavit of Alan Saltzman was found to be missing from the copy of the Clerk's Transcript furnished counsel. At time of printing, this page had still not been obtained. The record will be supplemented with this information.]

Memorandum of Points and Authorities

Severance:

Rule 14 of the Federal Rules of Criminal Procedures provides for separate trials if the Defendant would be prejudiced by the joinder of Defendants.

Transcript of Grand Jury Testimony:

In *United States vs. Youngblood*, 379 Fed. 2d 365 (1967), the Second Circuit Court of Appeals establishes the rule that upon the request of defense counsel, the court shall order that he be allowed to examine the grand jury testimony of any witnesses who testifies at the trial. The Court notes that an order will not be made if the Government can establish that disclosure would jeopardize national security or other significant interest. The Court expressly establishes that defense counsel is not required to show a "particularized need" for the Grand Jury Transcript. The "particularized need" standard authorized in *Dennis vs. United States*, 384 U.S. 855, 86 Supreme Court 1840, 16 L. Ed. 2d 973 (1966) is held to be not mandatory and is discarded because of the burden placed on the trial judges in applying it. Said burden consists of an *in camera* search for inconsistencies. The Court further declared that an alternative ground for allowing discovery of the Grand Jury Transcript is the language of Rule 6 of the Federal Rules of Criminal Procedures which gives to trial courts discretion to authorize disclosure of the transcript of Grand Jury Proceedings.

In *Brown vs. United States*, 359 U.S. 41, 48, 3 L. Ed. 2d 609, 616, 79 S. Ct. 539, the Court states:

> "A grand jury is clothed with great independence in many areas, but it remains an appendage of the Court, powerless to perform its investigative function

> without the Court's aid, because powerless itself to compel the testimony of witnesses. It is the Court's process which summons the witness to attend and give testimony, and it is the court which must compel a witness to testify, if after appearing he refuses to do so."

Re: Disclosure of Evidence Favorable Re: Guilt:

In *Brady vs. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (decided May 13, 1963), the Supreme Court stated as follows:

> "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates Due Process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."

Respectfully submitted,

/s/ Alan Saltzman

Attorney for Defendant

[18 U.S.C. § 371: Conspiracy; 18 U.S.C. § 1084: Interstate Transmission of Wagering Information; 18 U.S.C. § 1952; Interstate Transportation in Aid of Racketeering; 18 U.S.C. § 2: Aiding and Abetting.]

In the United States District Court, Central District of California, December, 1968 Grand Jury.

UNITED STATES OF AMERICA, Plaintiff, v. CLARENCE A. SWANK (aka JACK SWANK); LYLE K. BERGE; BERNARD I. BERNSTEIN; NICHOLAS P. DE SISTO, JR.; WAYNE DONAWAY (aka BABE DONAWAY); ROY D. GARNER; HAROLD W. GOLDBAUM; EMERY L. LONG; GEORGE SCOVILLE; Defendants.

No. 5356 Crim.

[FILED JANUARY 22, 1970]

The Grand Jury Charges:

COUNT ONE

[18 U.S.C. § 371]

Commencing prior to January 1, 1968, and continuing to the date of the return of this indictment, defendants CLARENCE A. SWANK (also known as JACK SWANK), LYLE K. BERGE, BERNARD I. BERNSTEIN, NICHOLAS P. DE SISTO, JR., WAYNE DONAWAY, (also known as BABE DONAWAY), ROY D. GARNER, HAROLD W. GOLDBAUM, EMERY L. LONG, GEORGE SCOVILLE, and their unindicted co-conspirators William O. Lawler, (also known as Bankroll Bill), Lois J. Rusch, Lynn Marmor (also known as Lennie Moore), and Kenneth M. Brandyberry (also known as Kenneth Miller), agreed, confederated and conspired together to commit offenses against the United States as follows:

(a) To engage in the business of betting and wagering

and to use wire communication facilities for the transmission in interstate commerce of bets and wagers and information assisting in the placing of bets and wagers, in violation of Title 18, United States Code, Section 1084;

(b) To travel in interstate commerce and use facilities in interstate commerce with intent to (1) distribute the proceeds of unlawful activity, namely: a business enterprise involving gambling and bribery offenses in violation of the laws of California, Ohio, Pennsylvania, Texas, and of the United States; and (2) promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity; and thereafter to perform and attempt to perform acts specified in (1) and (2) above, in violation of Title 18, United States Code, Section 1952;

(c) To carry into effect, and attempt to carry into effect a scheme in commerce to influence by bribery sporting contests, namely: horse races, with knowledge that the purpose of such scheme was to influence said contests by bribery, in violation of Title 18, United States Code, Section 224.

The object of the conspiracy was as follows: defendants and their unindicted co-conspirators would arrange to fix horse races, by means of bribery, injecting stimulants in horses, and other means, and would secure information regarding particular horses and jockeys from sources unavailable to the general public. Based upon these arrangements and this information, defendants would attempt to place and place wagers on particular horses. In order to maintain high pari-mutuel odds, and in order to avoid others not party to the conspiracy placing wagers on the

same horses, wagers were placed with bookmakers, away from the track, shortly before starting time of the race in which the particular horse was running. Defendants and their unindicted co-conspirators would travel in interstate commerce and use facilities in interstate commerce for the purpose of arranging for wagers to be placed, and to place and attempt to place wagers. Defendants and their unindicted co-conspirators would use wire communication facilities to transmit in interstate commerce wagers and information assisting in the placing of wagers.

To effect the objects of the conspiracy, defendants and their unindicted co-conspirators committed divers overt acts in the Central District of California, including the following:

1. On or about May 23, 1968, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), and defendant CLARENCE A. SWANK, (also known as JACK SWANK), attempted to place and placed wagers on the horse "Mister Fourway", entered in the seventh race at Golden Gate Fields, Albany, California, on May 23, 1968.

2. On or about September 25, 1968, defendant EMERY L. LONG telephoned defendant ROY D. GARNER in Upland, California.

3. On or about September 25, 1968, defendant CLARENCE A. SWANK, (also known as JACK SWANK), telephoned defendant ROY D. GARNER in Upland, CAlifornia.

4. On or about September 25, 1968, defendant EMERY L. LONG caused the injection of amphetamine, a stimulant drug, into the horse "Deerwood Duke," entered in the twelfth race at Pomona Fairgrounds, Pomona,

California, on September 25, 1968.

5. On or about September 25, 1968, defendant CLARENCE A. SWANK, (also known as JACK SWANK), telephoned unindicted co-conspirator Lynn Marmor, (also known as Lennie Moore), in Houston, Texas.

6. On or about September 25, 1968, defendant CLARENCE A. SWANK, (also known as JACK SWANK), telephoned defendant BERNARD I. BERNSTEIN in Beverly Hills, California.

7. On or about September 25, 1968, defendant BERNARD I. BERNSTEIN telephoned defendant HAROLD W. GOLDBAUM in Las Vegas, Nevada.

8. On or about September 25, 1968, defendant CLARENCE A. SWANK, (also known as JACK SWANK), telephoned defendant LYLE K. BERGE in Buena Park, California.

9. On or about September 25, 1968, defendant LYLE K. BERGE telephoned unindicted co-conspirator Kenneth M. Brandyberry, (also known as Kenneth Miller), in Downey, California.

10. On or about September 25, 1968, unindicted co-conspirators William O. Lawler (also known as Bankroll Bill), Lynn Marmor, (also known as Lennie Moore), Kenneth M. Brandyberry, (also known as Kenneth Miller), and defendants CLARENCE A. SWANK, (also known as JACK SWANK), LYLE BERGE, BERNARD I. BERNSTEIN and HAROLD W. GOLDBAUM attempted to place and placed wagers on the horse "Deerwood Duke," entered in the twelfth race at Pomona Fairgrounds, Pomona, California, on September 25, 1968.

11. On or about September 27, 1968, defendant

EMERY L. LONG, in Las Vegas, Nevada, telephoned defendant ROY D. GARNER, in Upland, California.

12. On or about November 28, 1968, defendant ROY D. GARNER telephoned defendant CLARENCE A. SWANK, (also known as JACK SWANK), in Los Alamitos, California.

13. On or about November 28, 1968, defendant CLARENCE A. SWANK, (also known as JACK SWANK), telephoned unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), in Gardena, California.

14. On or about November 28, 1968, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), and defendant CLARENCE A. SWANK, (also known as JACK SWANK), attempted to place and placed wagers on the horse "Maretazo II," entered in the ninth race at Bay Meadows Racetrack, San Mateo, California on November 28, 1968.

15. On or about December 3, 1968, defendant ROY D. GARNER telephoned defendant CLARENCE A. SWANK, (also known as JACK SWANK), in Los Alamitos, California.

16. On or about December 3, 1968, defendant CLARENCE A. SWANK, (also known as JACK SWANK) telephoned unindicted co-conspirator William Lawler, (also known as Bankroll Bill), in Gardena, Calfornia.

17. On or about December 4, 1968, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), and defendant CLARENCE A. SWANK, (also known as JACK SWANK), attempted to place and placed wagers on the horse "King Kildare," entered in the fifth race at Bay Meadows Racetrack, San Mateo, California, on December 4, 1968.

18. On or about April 18, 1969, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill),

telephoned defendant WAYNE DONAWAY, (also known as BABE DONAWAY), in Philadelphia, Pennsylvania.

19. On or about April 18, 1969, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), mailed money orders and cashier's checks totaling $4,200.00 to defendant WAYNE DONAWAY, (also known as BABE DONAWAY), in Philadelphia, Pennsylvania.

20. On or about April 10, 1969, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), gave cash totaling $4,000.00 to defendant NICHOLAS P. DE SISTO, JR.

21. On or about April 10, 1969, defendant NICHOLAS P. DE SISTO, JR. traveled to Cleveland, Ohio.

22. On or about April 10, 1969, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill) telephoned defendant GEORGE SCOVILLE in San Jose, California.

23. On or about April 10, 1969, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), mailed money orders and cashier's checks totaling $1,000 to defendant GEORGE SCOVILLE in San Jose, California.

24. On or about April 18, 1969, defendant GEORGE SCOVILLE traveled to Reno, Nevada.

25. On or about April 18, 1969, unindicted co-conspirator William O. Lawler, (also known as Bankroll Bill), and defendants CLARENCE A. SWANK, (also known as JACK SWANK), WAYNE DONAWAY, (also known as BABE DONAWAY), NICHOLAS P. DE SISTO, JR., and GEORGE SCOVILLE attempted to place and placed wagers on the horse "Prize Candy," entered in the second race at Gulfstream Park, Hallandale, Florida, on April 18, 1969.

COUNT TWO

[18 U.S.C. §§ 1084, 2]

On or about September 25, 1968, at 5:38 p.m., defendant CLARENCE A. SWANK, (also known as JACK SWANK), being engaged in the business of betting and wagering, knowingly used a wire communication facility, namely: a telephone, for the transmission in interstate commerce from Gardena, California, within the Central District of California, to Houston, Texas, of bets and wagers and information assisting in the placing of bets and wagers on sporting events and contests.

At said time and place, defendant ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

COUNT THREE

[18 U.S.C. §§ 1952, 2]

On or about September 25, 1968, defendant CLARENCE A. SWANK, (also known as JACK SWANK), and Lynn Marmor, (also known as Lennie Moore), used the telephone, a facility in interstate commerce between Gardena, California, within the Central District of California, and Houston, Texas, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, namely: a business enterprise involving gambling and bribery offenses in violation of California Penal Code, Sections 337a, 337b, and 337f; Texas Penal Code, Articles 648 and 652a; and Title 18, United States Code, Sections 224 and 1084; and thereafter defendant CLARENCE A. SWANK, (also known as JACK SWANK), and Lynn Marmor, (also known as Lennie Moore), performed and attempted to perform acts to promote, manage, establish, carry on, and

facilitate the promotion, management, establishment and carrying on of said unlawful activity, including the following: CLARENCE A. SWANK, (also known as JACK SWANK), and Lynn Marmor, (also known as Lennie Moore), attempted to place and placed wagers on the horse "Deerwood Duke," entered in the twelfth race at Pomona Fairgrounds, Pomona, California, on September 25, 1968.

At said time and place, defendant ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

COUNT FOUR

[18 U.S.C. §§ 1084; 2]

On or about September 25, 1968, at 5:39 p.m., defendants BERNARD I. BERNSTEIN and HAROLD W. GOLDBAUM, being engaged in the business of betting and wagering, knowingly used a wire communication facility, namely: a telephone, for the transmission in interstate commerce from Beverly Hills, California, within the Central District of California, to Las Vegas, Nevada, of bets and wagers and information assisting in the placing of bets and wagers on sporting events and contests.

At said time and place, defendants CLARENCE A. SWANK, (also known as JACK SWANK), and ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

COUNT FIVE

[18 U.S.C. §§ 1952; 2]

On or about September 25, 1968, defendants BERNARD I. BERNSTEIN and HAROLD W. GOLDBAUM used

the telephone, a facility in interstate commerce, between Beverly Hills, California, within the Central District of California, and Las Vegas, Nevada, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, namely: a business enterprise involving gambling and bribery offenses in violation of California Penal Code, Sections 337a, 337b, and 337f; and Title 18, United States Code, Sections 224 and 1084; and thereafter defendants BERNARD I. BERNSTEIN and HAROLD W. GOLDBAUM performed and attempted to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity including the following: defendants BERNARD I. BERNSTEIN and HAROLD W. GOLDBAUM attempted to place and placed wagers on the horse "Deerwood Duke," entered in the twelfth race at Pomona Fairgrounds, Pomona, California, on September 25, 1968.

At said time and place, defendants CLARENCE A. SWANK, (also known as JACK SWANK), and ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

COUNT SIX

[18 U.S.C. § 1952]

On or about September 27, 1968, defendants EMERY L. LONG and ROY D. GARNER used the telephone, a facility in interstate commerce, between Las Vegas, Nevada, and Upland, California, within the Central District of California, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and

carrying on of an unlawful activity, namely: a business enterprise involving gambling and bribery offenses in violation of California Penal Code, Sections 337a, 337b and 337f; and Title 18, United States Code, Sections 224 and 1084; and thereafter defendants EMERY L. LONG and ROY D. GARNER distributed the proceeds of said unlawful activity.

COUNT SEVEN

[18 U.S.C. §§ 1084; 2]

On or about April 18, 1969, William O. Lawler, (also known as "Bankroll Bill"), and defendant WAYNE DONAWAY, (also known as BABE DONAWAY), being engaged in the business of betting and wagering, knowingly used a wire communication facility, to wit: a telephone, for the transmission in interstate commerce from Gardena, California, within the Central District of California, to Philadelphia, Pennsylvania, of bets and wagers and information assisting in the placing of bets and wagers on sporting events and contests.

At said time and place, defendants CLARENCE A. SWANK, (also known as JACK SWANK), and ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

COUNT EIGHT

[18 U.S.C. §§ 1952; 2]

On or about April 18, 1969, William O. Lawler, (also known as Bankroll Bill), and defendant WAYNE DONAWAY, (also known as BABE DONAWAY), used the mail, a facility in interstate commerce, between Gardena, California, within the Central District of California, and Philadelphia, Pennsyl-

vania, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, namely: a business enterprise involving gambling offenses in violation of California Penal Code, Section 337a; Title 18, Pennsylvania Statutes, Section 4607; and Title 18, United States Code, Section 1084; and thereafter William O. Lawler, (also known as Bankroll Bill), and defendant WAYNE DONAWAY, (also known as BABE DONAWAY), performed and attempted to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity, including the following: William O. Lawler, (also known as Bankroll Bill), and defendant WAYNE DONAWAY, (also known as BABE DONAWAY), attempted to place and placed wagers on the horse "Prize Candy," entered in the second race at Gulfstream Park, Hallandale, Florida, on April 18, 1969.

At said time and place, defendants CLARENCE A. SWANK, (also known as JACK SWANK), and ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

COUNT NINE

[18 U.S.C. §§ 1952; 2]

On or about April 10, 1969, defendant NICHOLAS P. DE SISTO JR., traveled in interstate commerce from Los Angeles County, in the Central District of California, to Cleveland, Ohio, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, namely; a business enterprise involving gambling offenses in violation

of California Penal Code, Section 337a; Ohio Revised Code, Section 2915.05; and Title 18, United States Code, Section 1084; and thereafter defendant NICHOLAS P. DE SISTO, JR. performed and attempted to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity, including the following: defendant NICHOLAS P. DE SISTO, JR. attempted to place and placed wagers on the horse "Prize Candy," entered in the second race at Gulfstream Park, Hallandale, Florida, on April 18, 1969.

At said time and place, defendants CLARENCE A. SWANK, (also known as JACK SWANK), and ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

COUNT TEN

[18 U.S.C. §§ 1952; 2]

On or about April 18, 1969, defendant GEORGE SCOVILLE travelled in interstate commerce from San Jose, California, to Reno, Nevada, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful activity, namely: a business enterprise in Los Angeles County in the Central District of California, involving gambling offenses in violation of California Penal Code, Section 337a; and Title 18, United States Code, Section 1084; and thereafter defendant GEORGE SCOVILLE performed and attempted to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of said unlawful activity, including the following: defendant GEORGE SCOVILLE attempted to place and placed wagers

on the horse "Prize Candy," entered in the second race at Gulfstream Park, Hallandale, Florida, on April 18, 1969.

At said time and place, defendants CLARENCE A. SWANK, (also known as JACK SWANK), and ROY D. GARNER aided, abetted, counselled, induced and procured the commission of the offense alleged above.

A TRUE BILL

INA MORRIS

FOREMAN

WM. MATTHEW BYRNE, JR.
United States Attorney

In the United States District Court, Central District of California.

UNITED STATES OF AMERICA, Plaintiff, v. ROY D. GARNER, Defendant.

No. 5356-(WF)-Crim.

[FILED AUGUST 4, 1970]

Plaintiff, United States of America, herewith submits a proposed corrected indictment for the re-trial of the above defendant. The "corrections" consist of the striking of all allegations which have been rendered surplusage by prior proceedings and rulings of the Court, including the following:

(1) References to other defendants and other offenses no longer on trial have been removed from the heading;

(2) The names of defendants Berge, Bernstein, De Sisto, Donaway, Goldbaum, Long and Scoville have been removed from the list of conspirators at lines 26 - 29 of page 1;

(3) All references to William O. Lawler as "(also known as Bankroll Bill)" have been removed.

(4) The overt acts alleged to have been performed by persons other than those still named as co-conspirators have been removed, including overt acts numbered 2, 4, 7, 9, 11, 18, 19, 21 and 24;

(5) Count Three through Ten have been eliminated.

Respectfully submitted,

ROBERT L. MEYER
United States Attorney

DAVID R. NISSEN
Assistant United States Attorney
Chief, Criminal Division

/s/ GERALD F. UELMEN
Assistant United States Attorney

Attorneys for Plaintiff
United States of America

[Accompanying the aforesaid was an affidavit of service showing service August 4, 1970 on Burton Marks and a corrected Indictment reflecting the changes proposed and indicating charges under 18 U.S.C. § 371: Conspiracy; 18 U.S.C. § 1084: Interstate Transmission of Wagering Information; 18 U.S.C. § 2: Aiding and Abetting.]

APPLICATION FOR ORDER COMPELLING TESTIMONY
18 U.S.C. § 2514

In the United States District Court, Central District of California.

UNITED STATES OF AMERICA, Plaintiff, v. ROY D. GARNER, Defendant.

No. 5356-(WF)-CD.

[FILED OCTOBER 29, 1970]

The United States of America hereby moves the Court for an Order instructing CLARENCE A. "JACK" SWANK to testify and produce evidence pursuant to the provisions of Title 18, United States Code, Section 2514, and respectfully represents as follows:

1. CLARENCE A. "JACK" SWANK is appearing as a witness in the above-captioned case, a trial on an indictment charging violations of 18 U.S.C. § 1084 and conspiracy to violate 18 U.S.C. §§ 224, 1084 and 1952.

2. This application is made in good faith, with the approval of the Attorney General of the United States, by the United States Attorney, in whose judgment the testimony of CLARENCE A. "JACK" SWANK is necessary to the public interest.

WHEREFORE, the United States of America requests the Court to order CLARENCE A. "JACK" SWANK to answer questions and produce evidence relating to all matters pertinent to the pending trial, pursuant to the provisions of Title 18, United States Code, Section 2514.

Respectfully submitted,

ROBERT L. MEYER
United States Attorney

DAVID R. NISSEN
Assistant U. S. Attorney
Chief, Criminal Division

/s/ GERALD F. UELMEN
Special Assistant U. S. Attorney

Attorneys for Plaintiff
United States of America

Affidavit of Robert L. Meyer

State of California)
) ss.
County of Los Angeles)

ROBERT L. MEYER, being first sworn, deposes and says:

1. I am United States Attorney for the Central District of California.

2. This application is made in good faith with the approval of the Attorney General of the United States.

3. In my judgment the testimony of CLARENCE A. "JACK" SWANK sought is necessary to the public interest and material to the case of *United States v. Roy D. Garner*, No. 5356-(WF)-CD, presently in trial.

/s/ ROBERT L. MEYER

Notarized by Kathryn A. Clark
on the 28th day of October, 1970.

In the United States District Court, Central District of California.

UNITED STATES OF AMERICA, Plaintiff, v. ROY D. GARNER, Defendant.

No. 5356-(WF)-CD.

[OCTOBER 29, 1970]

The United States of America, having made written and oral application for an Order compelling CLARENCE A. "JACK" SWANK to testify and produce evidence in the trial of the above case, pursuant to Title 18, United States Code, Section 2514; and

CLARENCE A. "JACK" SWANK, having declined to answer questions by claiming his privilege against self-incrimination; and

The application for immunity having been approved by the Attorney General of the United States and made by the United States Attorney in whose judgment the testimony sought is necessary to the public interest, it is

ORDERED that CLARENCE A. "JACK" SWANK appear forthwith and testify and produce evidence with respect to all matters under inquiry in said trial.

DATED: This 29 day of October, 1970.

/s/ WARREN A. FERGUSON
United States District Judge

In the United States District Court, for the Central District of California.

UNITED STATES OF AMERICA v. ROY D. GARNER.

No. 5356-Criminal.

[FILED NOVEMBER 16, 1970]

On this 16th day of November, 1970, came the attorney for the government and the defendant appeared in person and by counsel, Burton Marks, Retained.

IT IS ADJUDGED that the defendant upon his plea of Not Guilty, and a verdict of Guilty, has been convicted of the offense of Conspiracy, in violation of Title 18, United States Code, Section 371, as charged in count one of the Indictment in ten counts filed the 22nd day of January, 1970, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) years on count one.

IT IS ADJUDGED that the defendant shall become eligible for parole at such time as the United States Board of Parole shall determine as provided in Title 18, United States Code, Section 4208 (a) (2).

IT IS ADJUDGED that the execution of sentence herein is stayed until November 30, 1970 at 2:00 p.m., the defendant's bond exonerated upon his surrender or upon posting an appeal bond in the amount of $10,000.00 personal surety.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ WARREN J. FERGUSON
United States District Judge

by: /s/ K. J. Murphy, Jr.,
Deputy Clerk

NOTATION RE NINTH CIRCUIT

The majority and dissenting opinions of the Ninth Circuit Court of Appeals appear in the Appendix for the Petition for Writ of Certiorari as Exhibit "A."

The Order denying the Petition for Rehearing appears as Exhibit "B" to said petition.

[Page 59, line 3 - page 67, line 10]

I understand you have some motions on matters outside the presence of the jury, Mr. Marks.

MR. MARKS; Yes, your Honor. I will try to be brief.

The Court received the opposition that I have to the introduction of certain telephone calls, and the Government's opposition.

I would like to be heard in two respects. Number one: I would like to orally argue in support of my position;

And secondly, I would like to suggest to the Court that I think we are going to be able to arrive at a stipulation - - well, let me give you my argument and then my suggestions.

As I see the thrust of Mr. Uelmen's opposition to my motion, which he deems a motion to suppress, and which I suggest may be an objection to the introduction of the evidence because it is not at all clear that a violation of Rule 605 would come within the purview of Rule 41 - - Section 605 would come within the purview of Rule 41 as a suppression motion.

Assuming that it does, or assuming that an objection to the introduction of the evidence is [60] appropriate, I suggest that it is obvious, not only from the Government's argument and the intended use that these communications with various telephone records are going to be put together, that they are expressly intended to divulge communications.

If my recollection is clear, Mr. Uelmen's argument - - I think it was around the time of the motions for judgment of acquittal where he stated something to the effect that the various communication lines on the chart, in fact spoke

louder than words, they didn't have to have the communications in there, that they expressed the words that were stated between Party A and Party B on those telephone toll records because the pattern itself divulged what the communication was about, taken in consideration with all the other evidence.

Therefore it is the express intention of the Government to use the telephone toll records as a communication, which I think is prohibited.

Now, the basis for 605 - - and I think the fact that the use of the telephone in and of itself - - is that you are supposed to have the right to privacy, a telephone I think, today being within the purview of - - it is Government controlled, it is a monopoly, it is a public utility, it bears the same status as the mails.

A person has the right to assume that his [61] telephone calls to wherever made will not be divulged except upon his consent and permission. And he has that same right to privacy in his own toll records as in fact the disclosure of his information.

The fact that they were obtained here by subpoena I think would be irrelevant unless the subpoena was backed up by an affidavit in support of the subpoena, which would be sufficient to establish probable cause for the existence of a crime, in order to have the Government be able, either by subpoena or otherwise, to take somebody's private property and utilize it.

So that essentially is my argument in opposition to the Government's opposition. I think that we are dealing with an unlawful use of telephone records.

Now, it is my opinion that if there is a prima facie illegality established, the possibility of a prima facie

illegality by the Government, then the burden is on the Government - - not on the defendant - - to show that the records which they have were lawfully obtained.

Now, as I understand the procedure, and I don't know whether Mr. Uelmen is willing to stipulate to this precisely in this form, all of the telephone records were in fact originally obtained through the use of grand jury subpoena, and were not obtained otherwise.

However, the – as I understand it there was an [62] extended investigation with the grand jury meeting practically every week and the Government presenting evidence with respect to this investigation for almost a year before the indictments issued.

Now, during the course of the investigation - - I use the words in quotes - - the Government secured the evidence of the toll records through grand jury subpoenas. They did not – - I would be willing to venture a guess - - produce the records at the time of the grand jury hearings for the grand jury to hear the evidence, but rather they gathered the evidence into their own investigatory staff through the use of subpoenas and then drew the charts which they later presented here to the Court, and I believe probably to the grand jury, at least a synopsis of what was contained in the records.

Now, in my opinion this would be an abuse of the grand jury subpoena process in two respects:

Number one, I would suspect - - and I think that it is the *Weeks* case that is the original case that dealt with subpoenas as being searches and seizures - - in any case I doubt whether the affidavits in support of the subpoenas were sufficient under any theory. And even if they were sufficient that the use of them was contrary to the intention of the statute

as to the manner in which they could be used.

In other words, they could only be used to [63] present to a Court or a grand jury, which is an arm of the Court, but not used as a method of obtaining investigatory leads by the Government, unless there has in fact been a compliance with the general rules of search and seizure to obtain the records.

So I wanted to suggest to the Court that we may be able to arrive at a stipulation as to how the records were obtained and how they were used.

I would like to have a ruling from the Court as to whether or not, assuming we can't arrive at a stipulation, as to whether or not the Government has the burden, or the defense has the burden of showing that there was an unlawfully obtained telephone record in violation of Section 605, and that therefore all of the proceedings flowing from that are tainted, and as such there has been no attenuation of the taint, and it would not be admissible in evidence.

What I am asking is that the Court first establish whether or not we have - - first make a ruling as to whether or not they can use the toll records obtained, I believe in violation of 605.

Secondly, if there isn't that direct violation as to whether or not the Government has the burden of showing that they were produced lawfully, if the defense has such a burden, can we have, during the course of the trial or sometime before the trial, a definitive ruling by the Court [64] as to whether or not these toll records can be used.

I also have the final argument, and that is that under the authority of the case called *State versus Timms,* 9, Ohio 2nd, which is a Supreme Court of Ohio, I think I cited it to the Court once before, the Ohio Supreme Court held that the

busines records exceptions to the hearsay rule is a denial of confrontation of witnesses.

And the Government is, in this instance, trying to establish that business records of the telephone company are somehow admissible to prove the truth of a particular conversation, or the existence of some type of communication.

And if they are taking that position, which I believe they are, then the records themselves are an attempt to establish a fact which is hearsay, and as I say, we have no way to examine the person who actually made the records, or the machine, and therefore they would not be admissible under that alternative theory.

I think that -- I don't know whether I have made myself clear, your Honor.

THE COURT: Just don't repeat it.

MR. MARKS: I won't.

THE COURT: Mr. Uelmen?

MR. UELMEN: Your Honor, with respect to the first point of who bears the burden of proof, I believe the law is quite clear, I think the moving party on a motion to [65] suppress does bear the burden of initially showing the illegality in the acquisition of the evidence.

And a recent case dealt precisely with that point in a motion where a similar argument was being made with respect to telephone toll records is the Tenth Circuit *Nolan* case, which we have cited in our memorandum, and which holds directly that the burden is on the moving party.

However, we have offered to stipulate with Mr. Marks that the method by which these particular records were acquired, telephone toll records were acquired was by

means of a subpoena to produce the records before the grand jury, at which time the records were produced.

Our basic position is that, first of all, Section 605 has no application whatsoever to telephone toll records because they are simply not communications that Section 605 was designed to protect.

That is the approach taken by the Second Circuit case of *Covella* which holds in essence that Section 605, interpreted in a common sense manner, has nothing to do with toll records kept in the ordinary course of business, because this is not the interception of a communication.

And if it is not a communication at the time it was intercepted, and the record is kept by the telephone company, it does not then, and is not going to become a communication because of the use to which the record was put [66] by the Government.

There is simply no general right to privacy as to records that are kept in the ordinary course of any business, bank records or anything else are subject to the subpoena powers of the court.

We would also alternatively argue that even if we were to say that Section 605 does apply to telephone toll records, that the means of acquisition of these records come within the exception recognized in Section 605 whereby those engaged in receiving and transmitting records or communications can divulge them pursuant to a lawful subpoena.

And finally with respect to the *Ohio versus Timms* case, your Honor, of course that has no application to the Federal Business Records Act which still recognizes the hearsay exception in Federal Courts for records kept in the ordinary course of business.

There were at least three cases from three different circuits that have come down within the past year, all of which have rejected all of the arguments that are being made by counsel today.

THE COURT: All right.

MR. MARKS: Submitted.

THE COURT: I think the Government's position is the correct one, Mr. Marks.

I feel that as a result of the memoranda which [67] have been furnished the Court by both sides and the result of the arguments, that the law is that business toll records from the telephone companies are not within the prohibition contained in 605. And further that, even if it were, the subpoena powers of this Court would exempt the prohibition from 605.

Insofar as the Federal Government rule on the admissibility of the business records violates the confrontation clause of the Bill of Rights, the cases are legion on that.

The motion will be denied.

[Page 248, line 24 - page 264, line 16]

BY MR. UELMEN:

Q Now Mr. Foote, during the - - does the Horse [249] Racing Board also maintain any records of the results of horse races?

A Yes, we do.

Q All right. In what form are these records kept?

A The chart books of the Triangle Publications. They are - - during each race, and maybe thereafter - - racing charts, performance charts are made of every race. And they are published in the Daily Racing Form, which is recognized as the official record keeping publishing house for racing in the United States.

MR. MARKS: Objection, move to strike the last statement of the witness as outside of his expertise and hearsay, that it is recognized as the official - -

THE COURT: On what facts do you base that statement, Mr. Foote?

THE WITNESS: It is a matter of regulations in the State of California that it is recognized. And it is recognized, to my knowledge, by the National Association of State Racing Commissioners, which is the Association made up of the appointed racing commissioners of every state, every racing state in the United States and the provinces of Canada that do have racing, Puerto Rico and Mexico.

THE COURT: Your objection - - excuse me.

MR. MARKS: I move to strike the answer of the witness as relating hearsay as far as the regulations of the [250] State of California are concerned. I don't believe any such exists, at least not to my knowledge.

And therefore the witness is testifying from knowledge which is not his own.

THE COURT: The objection will be overruled. The motion will be denied.

BY MR. UELMEN:

Q Now, sir, do these official records of the races indicate all of the horses that were entered in a particular

race?

A No, no, they don't indicate that. They would indicate all those that had been entered and whose starting was obligatory.

Q Now, I will ask you when starting becomes obligatory after a horse is entered in a race?

A After that time which is known as scratch time, or declaration time, which is established by the Racing Association. It is usually in the morning of the day the horse is to race.

Q Now, the Racing Association is something different than the Horse Racing Board, is it not?

A Yes, it is.

Q What is the Racing Association?

A The Racing Association can be a governmental [251] entity, such as a County Fair or a private association which is licensed by the California Horse Racing Board to conduct a race meeting at a certain period of time at a certain location.

Q Now, are the charts that you referred to records kept in the ordinary course of the business of the Horse Racing Board?

A Yes.

MR. MARKS: Your Honor, I will object to the question and move to strike the answer for the purpose of objecting, on the grounds that this witness is not qualified to give that answer.

He is a law enforcement officer, not a keeper of records, and is not qualified to answer such a question.

And the question calls for hearsay and is a conclusion of the witness.

THE COURT: Your objection, if it is proper, goes only to weight, Mr. Marks. I will permit you to ask the witness all the questions you want on cross-examination.

MR. MARKS: Yes, sir.

MR. UELMEN: May the witness be handed Exhibits 1-A through 1-G.

(Documents marked Plaintiff's Exhibits 1-A through 1-G for identification.)

(The exhibits were placed before the witness.)

[252]

BY MR. UELMEN:

Q Now, you have before you, Mr. Foote, what have been marked as Exhibits 1-A to 1-G. I will ask you if all of these exhibits contain charts which have been excised from the official chart books kept in the ordinary course of business of the Horse Racing Board?

MR. MARKS: Object to the question as calling for a conclusion of the witness, without any foundation as to how the records were brought, and whether he knows of their excision.

THE COURT: Overruled.

THE WITNESS: Yes, they are.

BY MR. UELMEN:

Q Now, the exhibits are arranged according to particular horses, Mr. Foote. Have you had occasion to compare the exhibits with the chart books to insure that the exhibits contain all of the races in which each particular horse ran during a given period?

A Yes, I have had that opportunity.

Q All right. Let's start with Exhibit 1-A.

A All right.

Q Could you tell us if Exhibit 1-A contains charts for all of the races in which Sole Support was officially entered during the years 1967 through 1969? [253]

A Yes.

Q With respect to 1-B, could you tell us if this exhibit contains charts of all the races in which the horse Box of Buttons was officially entered during the years 1967 through 1969?

A Yes.

Q And with respect to Exhibit 1-C, does that contain all of the charts of all of the races in which Mr. Fourway was entered officially during the same years?

A Yes.

Q And would the same be true with respect to the horse Deerwood Duke in Exhibit 1-D?

A Yes.

Q And with respect to the horse Maretazo II in Exhibit 1-E?

A Yes.

Q And with respect to the horse King Kildare in Exhibit 1-F?

A Yes.

Q And finally, with respect to the horse Prize Candy in Exhibit 1-G?

A Yes.

MR. MARKS: Your Honor, may I have the name of that horse in Exhibit D?

THE COURT: D is Deerwood Duke. [254]

MR. MARKS: Thank you.

MR. UELMEN: Your Honor, at this time we would

move the admission in evidence of Exhibits 1-A through 1–G.

THE COURT: If you will reserve your motion until the conclusion of cross-examination, or redirect examination, Mr. Uelmen.

MR. UELMEN: Yes, sir.

Q Now Mr. Foote, I am going to ask you to explain what information is contained on the official charts of a race.

Your Honor, to facilitate this explanation I have made copies of the chart of one particular race for distribution to the jury.

THE COURT: Well, you can ask the questions on voir dire before that is done then, Mr. Marks.

MR. MARKS: Thank you. May I ask them now?

THE COURT: Certainly.

VOIR DIRE EXAMINATION

BY MR. MARKS:

Q Mr. Foote, is there some person who reports a race as it goes along, which eventually arrives at a chart which you have there?

A Several, yes.

Q And how many people? [255]

A Twelve, I would say, at a thoroughbred meeting.

Q And do the twelve people who report this race get together and arrive at a general conclusion as to what information they are going to put into a particular racing form, is that correct, sir?

A No, no.

Q Who makes the decision as to what goes into the racing form?

A The employee of the Daily Racing Form who is

assigned to the race track.

Q And that person is not a member of the Horse Racing Board, is he?

A No, he is not.

Q And he is not paid by the State to do this, is he?

A No, sir.

Q And the records that he makes are not records of the State Racing Board, or any other racing association, is that correct?

A Those particular records are not, no.

Q And those are the records from which the form is acquired?

A No, sir - - well, those are the basic records, yes, sir.

Q And whatever is in those basic records prepared [256] by the employee of the Daily Racing Form really are an expression of his opinion as to what happened at a particular race, isn't that correct?

A I find that hard to answer. No, I wouldn't say - -

Q Well, - -

A It is a matter of opinion.

Q Well, there is, for instance, a racing form that shows how many lengths a horse was behind the winner. And lengths means a horse's length, isn't that right? The length of a horse?

A Yes.

Q All right. Are those lengths measured while the horses are running, or is it somebody expressing an opinion as to the distance?

A They are measured.

Q By whom?

A By a number of things. The electronic timing at the finish line, the multiple photographs that are made, photographs of the photo finish, in addition to the movie camera or the closed circuit TV, which is on video tape.

And then these are reviewed before this is finalized.

In addition the clocker makes notes as to where - - they have up to three clockers that clock the horses in [257] various positions.

I wouldn't say it is one man's opinion - -

Q Well - -

A It is a collection of facts - -

Q Well, it is the Daily Racing Form's man's collection of whatever facts these other persons have put together during the course of a race, is that right?

A Yes, certainly.

Q And the Horse Racing Board takes the Daily Racing Form, which is a private enterprise, and puts that into chart books, is that correct?

A No. We don't publish them, no. It is published by the Triangle Publications.

Q Which is a private enterprise?

A Yes.

Q And you purchase the publications, don't you?

A Just like law books, we purchase racing forms, right.

Q All right. What regulation of the State of California says that the Daily Racing Form is the official publication and books and records of the California Horse Racing Association?

A You mean a Section in the –

Q Yes.

A California Administrative Code? [258]

Q Yes.

A No, there is none in the - -

Q There is none, isn't that correct?

A That is correct.

Q And there is none by statute?

A No, there is none by statute.

Q And the only reason that the California Horse Racing Association has these particular chart books is because it helps them in the course of some of their business, correct?

A No, we have to buy them. We order them pursuant to an order of the Board.

Q But the Board makes the order, not by any statute, does it? There is no statute that says that they must order these books, is that right?

A No, no.

Q And there is no regulation that says they must order these books, is that right?

A I don't - -

Q There is none that you know of?

A No, there is no California Administrative Code regulation, that's right.

Q So the Board - - all the Board does is authorize the payment of money for the purchase of the books which you feel are of convenience to the Horse Racing Association, [259] isn't that right;

A Well - -

Q This is very valuable information in these chart books, isn't that right?

A Absolutely. They are very accurate. That is why we keep them.

Q That's right. But they are not books and records kept in the business of the California Horse Racing Association, are they?

A We keep those in the normal course of our business.

Q They are purchased, are they not?

A Yes, sir.

Q And they are not kept by the California Horse Racing Association, is that not correct? They are kept by the Triangle Publications and purchased by the California Horse Racing Association, is not that true?

A No. You are mixing your terms, sir.

Q Which employee of the California Board - - what is the official name?

A California Horse Racing Board.

Q Yes. Which official of the California Horse Racing Board keeps and maintains the records of the chart books?

A I do.

Q You prepare them? [260]

A No, I keep the records of them.

Q You purchase them and put them in your office?

A Yes, certainly.

MR. MARKS: I have nothing further, your Honor.

I will object to the admission of any chart books or forms as not being any official business records.

THE COURT: Mr. Uelmen.

DIRECT EXAMINATION (CONTINUED)

BY MR. UELMEN:

Q Mr. Foote, is California Horse Racing Board authorized by statute to promulgate its own regulations?

A Yes, it is.

Q All right. Does that authority include the authority to recognize what records will be official records of the Board?

A Yes, it does.

MR. MARKS: I object to that as calling for a conclusion of the witness.

THE COURT: Overruled.

BY MR. UELMEN:

Q Now, in exercising this delegated authority has the Horse Racing Board given any official recognition to the records maintained by the Daily Racing Form as [261] official records?

MR. MARKS: Objection, calls for a conclusion of this witness and not authorized by his position with the Board.

THE COURT: Overruled.

THE WITNESS: Yes, they have.

MR. UELMEN: Your Honor, again I will move the admission of these exhibits.

The Federal Business Records Act does not require that the person compiling the records be on the payroll of the organization that maintains the records. This is a function that can be delegated by contract, as long as they have the official sanction of the Horse Racing Board they are official records of that body.

MR. MARKS: May I ask a couple more questions, your Honor.

THE COURT: Certainly, Mr. Marks.

VOIR DIRE EXAMINATION

BY MR. MARKS:

Q What official regulation authorizes these chart

books as being the official chart books of the California Horse Racing Board?

A I can't think of any particular regulation which says that the Daily Racing Form is the one and only [262] chart book, except that all the conditions for a race are promulgated upon past performances.

And the Board recognizes officially, by Board order, that the Daily Racing Form is the only recognized authority for this, except when the horse is foreign bred.

Q Do you have that Board order?

A I can certainly obtain it. I don't have it with me, no.

MR. MARKS: Could we, your Honor, defer a ruling, if it becomes important as to the opinion - -

THE COURT: I don't think so, Mr. Marks.

Any other questions?

MR. MARKS: Your Honor, I would state very briefly now that to me this is like the purchasing of a novel from a book store and saying that that is the authority upon which we base our - -

THE COURT: You can draw a better analogy than that, for heaven sakes.

MR. MARKS: Buying a newspaper and saying that the charts in the daily newspaper are the official - -

THE COURT: How about the Congressional Record.

MR. MARKS: That, I understand, can be changed if the congressmen want it changed.

THE COURT: All right. Any claim that these charts are not trustworthy and accurate? [263]

MR. MARKS: Absolutely, your Honor.

THE COURT: Your evidence in that regard?

MR. MARKS: That the charts are a compilation - -

THE COURT: Your evidence, evidence that these charts are not accurate and correct, are not trustworthy.

MR. MARKS: I have - -

THE COURT: Do you have any evidence to show that these charts kept by the California Horse Racing Board and obtained from Triangle Publications are not trustworthy?

MR. MARKS: Not at this time.

THE COURT: All right.

MR. MARKS: Although I may have - -

THE COURT: All right. The motion will be overruled.

Exhibits 1-A, B, C, D, E, F, and G will be received in evidence.

(Plaintiff's Exhibit 1-A through G for identification were received in evidence.)

MR. MARKS: May I have the motion to strike reserved?

THE COURT: Any time you can bring any evidence, Mr. Marks, the Court will certainly permit you to.

MR. MARKS: Thank you.

THE COURT: But don't bring any novels in. [264]

DIRECT EXAMINATION (CONTINUED)

BY MR. UELMEN:

Q May the copies of the twelfth race on September 25, 1968, contained in Exhibit 1-D be distributed to the jury?

THE COURT: Yes. Mr. Largen.

(Whereupon the exhibits were handed to the jurors.)

MR. MARKS: Your Honor, just briefly for the record only, I would like to show that the objection also includes the objection to the business records exception to the hearsay rule, if that is the basis upon which these are admitted,

which is a denial of confrontation of witnesses.

THE COURT: Yes. I think your objection clearly shows that.

MR. MARKS: Yes.

[Page 420, line 18 - page 423, line 4]

MR. MARKS: Your Honor, on behalf of Mr. Garner I would like to first offer a stipulation, your Honor.

It is stipulated between counsel, for the purpose of my particular motion, that at the previous trial, prior to the commencement of the trial, Mr. Garner, through his counsel, made a motion for severance from Defendant Swank.

Said motion was opposed by the Government and [421] said motion was denied by the Court.

Is that so stipulated?

MR. UELMEN: So stipulated.

MR. MARKS: On the basis of that action by the Government, which prevented Mr. Garner from having access to the testimony of Mr. Swank, through the use of the subpoena powers or otherwise, Mr. Swank, for the record having declined to testify in his own behalf, I ask that the Court invoke its own supervisorial powers and deny the Government the right to now call Mr. Swank.

THE COURT: You are going to have to educate me as to your motion.

MR. MARKS: My motion - -

THE COURT: Because I don't understand it.

MR. MARKS: My motion - -

THE COURT: Are you saying that because there wasn't a severance in another trial the Government can't produce a witness at this trial?

MR. MARKS: Cannot produce a witness which they, through their own chicanery, if you want to use that word, have denied Mr. Garner the right to the access of a witness.

Now, I will explain the proposition. Mr. Swank was a co-defendant. He was an alleged co-conspirator at that trial. He had an absolute right not to testify.

Mr. Garner could not obtain the testimony of [422] Mr. Swank - -

THE COURT: I am not talking about that trial. That trial is a nonentity, isn't it?

MR. MARKS: The Government, in its opposition to the motion to sever - - if there had been a severance and Mr. Garner could have probably secured the testimony of Mr. Swank, that it was not to be used against him in any other proceeding, so that Mr. Garner could have the opportunity of a defense.

THE COURT: Oh, all right. I understand your motion now.

MR. MARKS: All right. Now, I say that the Government is estopped by its own desire to prevent Mr. Garner from having a witness at an earlier trial, from using this immunity type of doctrine, which is statutorially authorized, to produce the witness at a later time against Mr. Garner.

And since they produced the situation they cannot benefit by it, and the Court, as I say, under its own supervisorial powers and under just a question of due process of law, and I would say under the combined doctrine

of *Bruton* and *Green*, they don't have the right to call this witness.

THE COURT: Mr. Uelmen. [423]

MR. UELMEN: I have to confess I don't quite understand Mr. Marks' motion.

THE COURT: All right. The motion will be denied.

[Page 1201, line 8 - page 1209, line 18]

DIRECT EXAMINATION (of Roy Garner)

BY MR. MARKS:

Q Mr. Garner - - may the witness have Exhibit 19?

THE COURT: Mr. Murphy.

(The exhibit was placed before the witness.)

BY MR. MARKS:

Q Mr. Garner, do you file income tax records every year?

A I do.

Q Did you file one in - - is that for 1968?

A 1967.

Q You filed that in 1968, is that correct?

A Yes.

Q Now, before you filed that, signed and filed that particular report with the Federal Government, did you have any knowledge or understanding in your mind as to whether or not those records were confidential or whether they could be used in court? [1202]

A I believed them to be confidential. I had been advised that they were by an attorney.

Q And is that the reason that you did file it?

A Yes.

MR. MARKS: Cross examine.

THE COURT: Mr. Uelmen.

CROSS EXAMINATION

BY MR. UELMEN:

Q Mr. Garner, what attorney advised you that they were confidential?

A Larry Thorne.

Q When did he give you that advice?

A Larry Thorne has been my family attorney for years. I couldn't tell you the specific time, sometime before I filed, the first time I filed showing gambling income on an income tax return.

Q Now, did Mr. Thorne tell you that they were absolutely inviolable, that the confidentiality of them could never be uncovered for any reason?

A That was his opinion.

MR. UELMEN: Nothing further.

THE COURT: Mr. Marks.

MR. MARKS: That is all I have.

THE COURT: You may step down, Mr. Garner.

(Witness excused.) [1203]

MR. MARKS: And in further objection to the introduction of the records, your Honor, I would offer the argument - - and I think it was presented by Mr. Saltzman and Mr. Winsberg in the earlier case - - with respect to the fact that apparently a presidential directive must be had

in order to have income tax records opened and divulged.

So I would object, your Honor, on the grounds I believe it is the *Haines, Grosso* and *Marquette* cases, and there is one later case about income tax records where the Supreme Court - - if I recall it - - the Supreme Court said they couldn't use the privilege against self incrimination to file false income tax reports, but the implication of that case - - and I can't remember the name of it - - but the implication of that case certainly is that it could not be used if the only cause of using the report was to incriminate the person in some way for the fact of filing.

THE COURT: Mr. Uelmen.

MR. UELMEN: Your Honor, the confidentiality of income tax returns and the circumstances under which they can be disclosed is a matter of law promulgated by Congress and promulgated by the Secretary of the Treasury under statutes enacted by Congress.

If an individual's erroneous belief as to what the law is were held to create some privilege that did not normally exist, of course any effort to regulate this con- [1204] fidentiality by Congress would be frustrating. We could have the situation of someone saying, somebody told me that police officers can't come into my apartment, therefore any contraband that was discovered in my apartment should be suppressed because I thought I had an absolute privilege of secrecy in my apartment. That simply isn't the law.

The law has spoken as to under what circumstances these income tax returns can be divulged. And it is quite clear it is not an absolute privilege of confidentiality.

Within the Internal Revenue Code there is authorization for the Secretary of the Treasury to promulgate

regulations as to when income tax returns can be disclosed. That regulation has been promulgated in Title 26 of the Code of Federal Regulations, Section 458.204. There has been full compliance with this provision of the Code of Federal Regulations.

At the time of the Motion to Suppress the income tax returns in the last trial we made the record, or the letter requesting release of these returns a matter of record as an exhibit in the case. And it indicates full compliance with all of these statutes and regulations.

THE COURT: What exhibit would that be, Mr. Murphy?

MR. UELMEN: I think Mr. Murphy will have the [1205] answer to that.

THE COURT: Where would it be now, that exhibit?

MR. UELMEN: The exhibits have been retained in the clerk's office, so it would still be here, your Honor.

MR. MARKS: Your Honor.

THE COURT: Yes.

MR. MARKS: I have one observation. As I understand the case - - and I am challenging the validity of the regulation - - the Supreme Court, in my understanding, has said there are times when the Government can impose or overcome certain privileges where they can show a particularized need for having the information.

The only need or use that the Government has to reveal the contents of an otherwise confidential memorandum in this case is the need to try and use it as evidence against the defendant, which is not the type of need that the Supreme Court was indicating.

If the Government, in the course of function of its

business may have a need to disclose records for the purpose of statistics, or bringing out some fact, but not, it can't say it has a need to convict a person by overcoming his privilege against self incrimination, because this is compelled testimony. The Government requires that a person file an income tax return. And failure to do so [1206] is a crime.

THE COURT: All right.

We will take our recess now. Mr. Murphy, if you can obtain that exhibit that was entered, introduced in the prior trial, then Mr. Uelmen, if you and Mr. Marks can get together with Mr. Stefanak concerning the telephone information concerning Mr. Long - - and how many witnesses would you have, Mr. Marks?

MR. MARKS: There would be four or five short witnesses, your Honor. But none of them are here.

THE COURT: None are here?

MR. MARKS: Because of some miscalculations as to the type of testimony and what was going to - -

THE COURT: All right. We can spend the rest of the day settling instructions and maybe hearing the motions.

MR. MARKS: I do have a motion that I am thinking about, your Honor.

THE COURT: All right. We will take a recess and then when you are ready let Mr. Murphy know and we will resume outside the presence of the jury, first of all.

(Short recess.)

THE COURT: Mr. Marks.

(Whereupon the following proceedings were had in open court but outside the presence and hearing of the jury:) [1207]

MR. MARKS: Are we here now with respect to Mr. Stefanak's testimony, your Honor?

THE COURT: Mr. Stefanak and also the income tax return, Mr. Marks.

MR. MARKS: Yes, sir.

I understand they cannot find the Exhibit 55, your Honor.

I object to the introduction or receipt of the exhibit for the reasons stated to the Court, the objections to the Court.

THE COURT: Mr. Murphy handed me a Xerox copy of a Fifth Circuit case and said that you gave it to him.

MR. MARKS: That is for my Motion for Judgment of Acquittal, your Honor.

THE COURT: Well, that case says that Grimes, who was the appellant, contends that the introduction - - this is on Page 796 of 79 Fed. Reporter 2d, "Grimes, the appellant, contends that the introduction of his 1960 income tax return in which he stated his business was gambling violated his Fifth Amendment rights. We believe this contention to be without merit."

MR. MARKS: I believe that case is before the Supreme Court, your Honor, and the other ones I cited.

THE COURT: All right.

MR. MARKS: The case there was cited with par- [1208] ticular respect to Count Two and the telephone calls.

THE COURT: All right.

MR. MARKS: Which is more in point.

THE COURT: All right. Mr. Uelmen.

MR. UELMEN: Your Honor, with respect to Exhibit 55, I have been informed that - -

THE COURT: This is 55 of the first trial?

MR. UELMEN: Of the first trial; I have been informed

that the clerk has misplaced this with a number of other exhibits that were not admitted into evidence, but were marked for identification in the course of the trial.

I have located the transcript reference, however, at Page 2290 of the transcript of the first trial, February 18, 1970, when the letter was marked and admitted and there was reference to the fact in the transcript that the letter indicated that the Government had written to the Internal Revenue Service in compliance with Section 6103 of the Internal Revenue Code.

If the Court deems it necessary I can inquire of the Internal Revenue Service whether they have the original of the letter still on file. I am sure what was marked as an exhibit was a carbon copy of the letter from our file.

The Supreme Court last addressed itself to the problem of the admissibility of income tax returns for the purpose for which we are offering them in the case of *United* [1209] *States v. Sullivan,* almost 50 years ago.

THE COURT: I don't think I need any argument on the law, Mr. Uelmen.

MR. UELMEN: I just wanted to point out that even after *Grimes* and *Marquette* the Court distinguished *Sullivan* and indicated that was still the law.

THE COURT: The Court having presided at the previous trial in which Exhibit No. 55 was received for the purpose of laying a foundation for the introduction of the income tax returns of Mr. Garner in that trial, the Court will take judicial knowledge of all of the proceedings which took place in the prior trial in that regard.

There is no contention, is there, Mr. Marks, that Exhibit 19 is not the tax returns of Mr. Garner?

MR. MARKS: No.

THE COURT: All right. The objection will be overruled.

19 will be received in evidence.

[Page 1365, line 9 - page 1366, line 12]

All right. We know Swank was getting the horses from another source. We know that Mr. Garner was aware of this arrangement between Mr. Swank and Mr. Lawler.

And we also know something else about Mr. Garner. We know Mr. Garner was himself in the business of betting and wagering. That is Mr. Garner's business.

We know that because Exhibit 19 is in evidence. And Exhibit 19, which you will see in the jury room, is income tax return which Mr. Garner filed with the Federal government for the years 1965, 1966 and '67.

You will see from these tax returns that in 1965, for example, Mr. Garner listed as his occupation on the tax return "Professional Gambler," self-employed; that he reported a total income for that year of approximately $8,200.00, of which $8,020.00 was derived from wagering income.

You will see for the year 1966 that Mr. Garner [1366] reported a total income of $22,000.00, all of which was derived from wagering income.

We will note that in 1967 Mr. Garner declared an income from wagering in excess of $25,000.00, reporting a loss on his horse racing ventures, his ownership of race horses, of approximately $12,500.00, and a total income of $12,500.00.

So we know Mr. Garner himself was no stranger to the

business of wagering and gambling.

Now, how do we go beyond this to show that Mr. Garner was the source from which Mr. Swank was getting the horses he was betting?

United States of America

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Date: January 21, 1970

TO) WHOM THESE PRESENTS SHALL COME, GREETING:

I y that the annexed are true and correct copies of Form 1040, U. S. Individual Income Tax Return filed by Roy D. and Rowena Garner, Social Security Numbers 565-34-2357 (H) and 562-30-6316 (W) for taxable periods ending 1967, 1966 and 1965

On in this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed. on the day and year first above written.

By direction of the Secretary of the Treasury:
F. S. Schmidt, District Director

By: F P Harrington
F. P. Harrington, Acting Chief
Special Procedures Section

FORM 2866 (REV. 10-62)

Please attach Check or Money Order here

... Street
ONTARIO, CALIFORNIA

(1) INCLUDE 3% UNDERESTIMATE PENALTY FORM ... ATTACHED.

F1

532221186997

1040 U.S. Individual Income Tax Return

U.S. Treasury Department, Internal Revenue Service

for the year January 1–December 31, 1967, or other taxable year beginning ..... , 1967, ending ..... , 19 .....

1967

Please print or type

First name and initial (If joint return, use first names and middle initials of both)	Last name	Your social security number
ROY D & ROWENA	GARNER	565 34 2357
Home address (Number and street or rural route)		**Your occupation**
754 W. AZURE CT.		HORSEMAN
City, town or post office, and State	**ZIP code**	**Spouse's social security number**
ONTARIO, CALIFORNIA	91762	562 30 6316
If you have below name and address on your return for 1966 (if same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1966 names and addresses	SAME	**Spouse's occupation** HOUSEWIFE
Your present employer and address	SELF	
Spouse's present employer and address, if joint return		

2

Your Filing Status—check only one:

1a ☐ Single
1b ☒ Married filing joint return (even if only one had income)
1c ☐ Married filing separately. If spouse is also filing a return, enter her (his) social security number in space provided above and give first name here .....
1d ☐ Unmarried Head of Household
1e ☐ Surviving widow(er) with dependent child

Your Exemptions

	Regular	65 or over	Blind	
2a Yourself . . .	☒	☐	☐	Enter number of boxes checked ▶ 2
2b Spouse . . .	☒	☐	☐	

3a First names of your dependent children who lived with you PHYLLIS, JOHN — Enter number ▶ 2

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed . . . . . ▶ 4

Please attach Copy 3 of Form W-2 here

Income If joint return include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation	5	
	6	Other income (from page 2, Part II, line 8)	6	12,463 91
	7	Total (add lines 5 and 6)	7	12,463 91
	8	Adjustments to income (from page 2, Part III, line 5)	8	
	9	Total income (subtract line 8 from line 7)	9	12,463 91
Find tax from table —OR— **Figure tax using tax rate schedules**	10	If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.	10	
	11a	If you itemize deductions, enter total from page 2, Part IV, line 17. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9; OR (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately).	11a	3,030 32
	11b	Subtract line 11a from line 9	11b	9,433 59
	11c	Multiply total number of exemptions on line 4, above, by $600	11c	2,400 00
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	11d	7033 59
Your Tax, Credits, and Payments	12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see lines 11a–11d)	12	1,196 38
	13	Total credits (from page 2, Part V, line 4)	13	
	14a	Income tax (subtract line 13 from line 12)	14a	1,196 38
	14b	Tax from recomputing prior year investment credit (attach statement)	14b	
	15	Self-employment tax (Schedule C-3 or F-1)	15	
	16	Total tax (add lines 14a, 14b, and 15)	16	1,196 38
	17	Total Federal income tax withheld (attach Forms W-2)	17	
	18	Excess F.I.C.A. tax withheld (two or more employers—see page 5 of instr.)	18	
	19	☐ Nonhighway Federal gasoline tax—Form 4136. ☐ Reg. Inv.—Form 2439	19	
	20	1967 Estimated tax payments (include 1966 overpayment allowed as a credit)	20	
	21	Total (add lines 17, 18, 19, and 20)	21	NONE
Balance Due or Refund	22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return	22	1234 66 ①
	23	If payments (line 21) are larger than tax (line 16), enter Overpayment	23	
	24	Amount of line 23 you wish credited to 1968 Estimated Tax	24	
	25	Subtract line 24 from 23. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	25	

Please attach Check or Money Order here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here

Your signature ROY D. GARNER Date 4/13/68

Spouse's signature (If filing jointly, BOTH must sign even if only one had income) ROWENA GARNER Date 4/13/68

Signature of preparer (Other than taxpayer) GENE PORTER Date 4/13/68

Address 1047 W. 6th Street

CERTIFIED PUBLIC ACCOUNTANT

ONTARIO, CALIFORNIA

TAXAN FORMS CO.

① INCLUDES 38.28 UNDERESTIMATE PENALTY
FORM 2210 ATTACHED.

F1

61

BEST COPY AVAILABLE

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Exempti... Complete only for dependents claimed on line 3b, page 1

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Mo. the live in your home. If born or died during year write "B" or "D"	(d) If 4 dependent have income of $1000 or more	(e) Amount YOU furnished for dependent's support, if 100% write "ALL"	(f) Amount furnished by Others including dependent
1				$	$
2					

3 Total number of dependents listed above. Enter here and on page 1, line 3b . . . . . ▶

Income from sources other than wages, etc.

1a Gross dividends and other distributions on stock (list payers and amounts—write (H), (W), (J), for stock held by husband, wife, or jointly) .....

Total line 1a . . . . . ▶

1b Exclusion (see instructions) .....

1c Capital gain distributions (see page 6 of instructions) .....

1d Nontaxable distributions (see page 6 of instructions) .....

1e Total (add lines 1b, 1c, and 1d) . . . .

1f Taxable dividends (line 1a less line 1e—not less than zero) . . . . . ▶

Interest (list payers and amounts below)

Earnings from savings and loan assoc. and credit unions.

.....

Other interest (banks, bonds, tax refunds, etc.)

UNITED SAVE BANK 8.32

2 Total interest income . . . . . ▶ 8.32

3 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (attach Sch. B) .

4 Business income or loss (attach Schedule C) . . (12,344.41)

5 Sale or exchange of property (attach Schedule D) .

6 Farm income or loss (attach Schedule F) . . .

Miscellaneous income (state nature and source)

WAGERING INCOME (W) 25,400.00

7 Total miscellaneous income . . . . ▶ 25,400.00

8 TOTAL (add lines 1f, 2, 3, 4, 5, 6, and 7). Enter here and on page 1, line 6 . . . ▶ 12,463.91

Adjustments to income

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement) .

2 Moving expenses (attach Form 3903) . .

3 Employee business expense (attach Form 2106 or other statement) . . . . .

4 Payments by self-employed persons to retirement plans, etc. (attach Form 2950SE) .

5 TOTAL ADJUSTMENTS (lines 1 through 4).

Itemized deductions – Use only if you do not use tax table or standard deduction.

Medical and dental expense (not compensated by insurance or otherwise)—Attach itemized list.

1 One half (but not more than $150) of insurance premiums for medical care . .

2 Total cost of medicine and drugs . . .

3 Enter 1% of line 9, page 1 . . . . .

4 Subtract line 3 from line 2 (not less than zero)

5 Other medical, dental expenses (include balance of insurance premiums for medical care not deductible on line 1) . . . 1048

6 Total (add lines 4 and 5) . . . . . .

7 Enter 3% of line 9, page 1 . . . . .

8 Subtract line 7 from line 6 (not less than zero) .

9 Total (add lines 1 and 8) . . . . . ▶ 670.22

Contributions.—Cash—including checks, money orders, etc. (itemize) .....

10 Total cash contributions . . . . . .

11 Other than cash (see instructions for required statement). Enter total of such items here .

12 Carryover from prior years (see page 9 of instr.)

13 Total contributions (add lines 10, 11, and 12—see instructions for limitation) ▶ 17500

Taxes.—Real estate . . . . . .

State and local gasoline . . . . .

General sales (see page 15 of instructions) .

State and local income . . . . . .

Personal property

14 Total taxes SCH A ATTACHED ▶ 1108.45

Interest expense.—Home Mortgage . . .

Other (itemize) .....

15 Total interest expense SCH A ATTACHED ▶ 948.45

Miscellaneous deductions.—(see page 9 of instructions) .....

16 Total miscellaneous SCH A ATTACHED ▶ 32.00

17 TOTAL DEDUCTIONS (add lines 9, 13, 14, 15, and 16). Enter here and on page 1, line 11a ▶ 3030.22

Credits

1 Retirement income credit (Schedule D) .

2 Investment credit (Form 3468) . . . .

3 Foreign tax credit (Form 1116) . . . .

4 TOTAL CREDITS (for page 1, line 13) . ▶

EXCESS ACCOUNTS If you had an excess allowance or claimed

67

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SCHEDULE C (Form 1040)
Department of the Treasury
Internal Revenue Service

Profit (or Loss) From Business or Profession

(Sole Proprietorships)

(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1967

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040

R.D. & R. GOCKEN - 754 W. AZUSA CT. - UPLAND, CALIF

A Principal business activity (See separate instructions) HORSE RACING product (For example, retail—hardware; wholesale—tobacco; services—legal; manufacturing—furniture; etc.) 7940

B Business name BIRDIE STABLES C Employer Identification Number

D Business address if different from above, otherwise enter "same" SAME (ZIP code)

E Indicate method of accounting: (1) [X] cash. (2) [ ] accrual; (3) [ ] other.

F Was an Employer's Quarterly Federal Tax Return, Form 941, filed for this business for any quarter in 1967? [ ] Yes [X] No.

G Is this business located within the boundaries of the city, town, etc., indicated on Line D? [X] Yes [ ] No.

H Did you own this business at the end of 1967? [X] Yes [ ] No.

I How many months in 1967 did you own this business? 12

1	Gross receipts or gross sales $46047 Less: Returns and allowances $		$ 46,047.00
2	Inventory at beginning of year (if different from last year's closing inventory attach explanation)		
3	Merchandise purchased $ less cost of any items withdrawn from business for personal use $	33,153.00	
4	Cost of labor (do not include salary paid to yourself)		
5	Material and supplies		
6	Other costs (explain in Schedule C-1)		
7	Total of lines 2 through 6	33,153.00	
8	Inventory at end of this year	700.00	
9	Cost of goods sold (subtract line 8 from line 7)		32,453.00
10	Gross profit (subtract line 9 from line 1)		13,594.00
	OTHER BUSINESS DEDUCTIONS		
11	Depreciation (explain in Schedule C-2)	1,600.50	
12	Taxes on business and business property (explain in Schedule C-1)	165.58	
13	Rent on business property		
14	Repairs (explain in Schedule C-1)		
15	Salaries and wages not included on line 4 (exclude any paid to yourself)		
16	Insurance		
17	Legal and professional fees		
18	Commissions		
19	Amortization (attach statement)		
20	Retirement plans, etc. (other than your share—see separate instructions)		
21	Interest on business indebtedness		
22	Bad debts arising from sales or services		
23	Losses of business property (attach statement)		
24	Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
25	Other business expenses (explain in Schedule C-1)	25,172.33	
26	Total of lines 11 through 25	1247	26,538.41
27	Net profit (or loss) (subtract line 26 from line 10). Enter here; in Schedule C-3, line 1; and on Form 1040, page 2, Part II, line 4		(12,944.41)

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount
12	P.R.S. PROP TAX	$ 105.58
✓	CALIF. HORSE RACING BOARD LICENSE	60.00
		165.58

Line No.	Explanation	Amount
25	SCH #2 ATTACHED	$ 25,172.33

(C)

NO FORMS CO.

2 11 17 27

63

Form 1040) 19 67

SCHEDULE C-2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62-21 and 65-13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear use the first heading for depreciation under Revenue Procedures 62-21 and 65-13 and the second heading for other authorized practices.

1. Group and guideline class — OR — Description of property	2. Cost or other basis at beginning of year — OR — Cost or other basis	3. Asset additions in year (amount) — OR — Date acquired	4. Asset retirements in year (amount) (applicable only to Rev. Proc. 62-21)	5. Depreciation allowed or allowable in prior years	6. Method of computing depreciation	7. Class life — OR — Rate (%) or life	8. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)							
1967 CADILLAC	$ 700 00	10/66	SOLD (1) 10/67	-0-	SL	3 Yrs	700 00
1968 CADILLAC	6,012.00	10/67		-0-	SL	3 YRS	500 50 3 mo
SOLD	(5,700.00)						
(1) SOLD FOR $700 - NO GAIN OR LOSS ON SALE							
2 Totals	6,012.00						1,200 50
3 Less: Amount of depreciation claimed elsewhere in Schedule C							
4 Balance—Enter here and on page 1, line 11							1200 50

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Procs 62-21 & 65-13							
2 Other . . .	1200 50						1200 50

EXPENSE ACCOUNT INFORMATION N/A

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 27, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and wages
Owner		
1		
2		
3		
4		
5		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

J A hunting lodge . . . . . ☐
working ranch or farm . . . ☐
fishing camp . . . . . ☐
resort property . . . . . ☐
pleasure boat or yacht . . . ☐
or other similar facility . . . ☐?
(Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

K Vacations for you or members of your family, or employees or member of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☐ NO

L The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

M The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

ADDITIONAL INFORMATION

1 Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories? ☐ YES ☒ NO. If "Yes," attach explanation.

2 Are you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1967? (See last paragraph of separate instructions for Schedule C.) ☐ YES ☒ NO. If "Yes," where were they filed? .....

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Form 2210
U.S. Treasury Department
Internal Revenue Service

Statement Relating to Underpayment of Estimated Income Tax by Individuals

(To be filed with Form 1040 or Form 1040A)

1967

Name and address as shown on Form 1040

R.D. & R. GAINER - 754 W. AZURE CT. - UPLAND, CALIF

Social Security Number: 565 30 2257

PART I.—FOR ALL INDIVIDUALS (See Instruction A.)

1 1967 Tax (enter amount shown on line 16, page 1 of Form 1040, or line 8 of Form 1040A)	$ 1196.38
2 Tax credit claimed for gasoline and lubricating oil in 1967 from Form 4136	-0-
3 Taxes adjusted (line 1 less line 2)	1196.38
4 Amount on line 3 multiplied by 80% (farmers and fishermen use 66⅔%)	$ 957.10

PART II.—FOR ALL INDIVIDUALS EXCEPT FARMERS AND FISHERMEN (Farmers and Fishermen Use Part III)

How to figure your underpayment, see Instruction D

	Due Dates of Installments: Apr. 15, 1967	June 15, 1967	Sept. 15, 1967	Jan. 15, 1968
1 Divide amount on line 4, Part I, by the number of installments required for the year and enter result in appropriate columns. (See Instruction B)	$ 239.27	$ 239.28	$ 239.27	$ 239.28
2 Amounts paid on estimate for each period, and tax withheld [1]	$ -0-	$ -0-	$ -0-	$ -0-
3 Overpayment of previous installment [2]	-0-	-0-	-0-	-0-
4 Total of line 2 and line 3	-0-	-0-	-0-	-0-
5 Underpayment (line 1 less line 4) or overpayment (line 4 less line 1)	$ 239.27	$ 239.28	$ 239.27	$ 239.28

Exceptions which void the "additional charge," see Instruction E

6 Total amount paid or withheld from Jan. 1 through the installment date indicated	$	$	$	$
7 Exception 1. 1966 tax $	25% of 1966 tax $	50% of 1966 tax $	75% of 1966 tax $	100% of 1966 tax $
8 Exception 2. Tax based on 1966 income, 1967 rates and exemptions $	25% of this tax $	50% of this tax $	75% of this tax $	100% of this tax $
9 Exception 3.	20% of tax on annualized income $	40% of tax on annualized income $	60% of tax on annualized income $	
10 Exception 4.	90% of tax (Jan. 1 thru Mar. 31) $	90% of tax (Jan. 1 thru May 31) $	90% of tax (Jan. 1 thru Aug. 31) $	

How to figure the "additional charge," see Instruction F

11 Amount of underpayment (from line 5, Part II)	$ 239.27	$ 239.28	$ 239.27	$ 239.28
12 Date of payment or April 15, 1968, whichever is earlier [3]	4/15/68	4/15/68	4/15/68	4/15/68
13 Number of days from due date of installment to the date shown on line 12 above	366	305	213	91
14 Additional charge (6 percent per year on the amount on line 11 for the number of days shown on line 13)	$ 14.36	$ 11.96	$ 8.37	$ 3.57
15 Total of amounts on line 14. On page 1, of your income tax return, show this amount in the bottom margin as "Additional Charge" and increase line 22 or decrease line 23 accordingly				$ 38.26

PART III.—FOR FARMERS AND FISHERMEN. It is not necessary to file this form if your return is filed and tax due paid by February 15, 1968

See Instruction D	1 Enter the amount shown on line 4, Part I (the minimum amount due on Jan. 15, 1968)	$
	2 Amounts withheld during 1967 and amounts paid or credited, by Jan. 15, 1968	
	3 Underpayment of estimated tax (line 1 less line 2)	$
See Instruction E	4 Exception 1.—Tax shown on 1966 return	$
	5 Exception 2.—Tax based on 1966 income, using 1967 rates and exemptions	$
See Instruction F	6 Number of days from Jan. 15, 1968, to date of payment or Apr. 15, 1968, whichever is earlier	
	7 Additional charge (6 percent per year on the amount shown on line 3, Part III, for the number of days shown on line 6, Part III). On page 1 of your tax return, show this amount in the bottom margin as "Additional Charge" and increase line 22 or decrease line 23 accordingly	$

[1] An equal part of the tax withheld during the year may be considered paid on each required installment date unless you establish the dates on which withholding occurred and consider such withholding as paid on the date when actually withheld. If your return was filed by January 31, 1968, and the balance of tax paid in full, include such balance on line 2, Part II for the January 15, 1968, installment.

[2] Any overpayment of an installment on line 5 in excess of all prior underpayments should be applied as a credit against the next installment.

[3] If you made more than one payment for a given installment, attach statement showing separate computation for each payment. If you filed your return and paid the balance of tax due by January 31, 1968, such balance shall be considered paid as of January 15, 1968.

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TRANS FORMS CO

R. D. & R. GARNER
NAME

TAXABLE YEAR ENDED 12/31/67

SCHEDULE OF DEDUCTIONS

ICAL EXPENSES	FEDERAL	STATE
S AND MEDICINES	130 00	
1 % OF ADJ. GROSS	124 64	
T DRUGS AND MEDICINES	5 36	
DRS AND DENTISTS		
MCFARLANE O.D.	71 75	
OLDS DDS	138 00	
PEVALEY MD	91 50	
ROBINSON MD	43 00	
SMITH MD	30 00	
FAIRIE DENTAL X-RAY LAB	37 00	
ALS SAN ANTONIO	308 72	
ANCES		
S, NOT DEDUCTED BELOW	174 80	
FOR MED. TREATMENTS		
AID, GLASSES, ETC.		
MEDICAL EXPENSES	900 14	
NS. REIMBURSEMENTS	NONE NOT REIM'D	
3% (5) 3 ADJ. GROSS INCOME	900 14	
	373 92	
SUB. TOTAL	526 22	
S. - 1/2 PREM. (LMT. $150)	150 00	
DICAL DEDUCTIONS	676 22	676 22

TAXES	FEDERAL	STATE
PERSONAL PROPERTY TAX 33-10	23 00	23 00
REAL ESTATE TAX	441 56	441 56
STATE DISABILITY INSURANCE		
SALES TAX	139 00	139 00
STATE INCOME TAX	405 37	XXX XX
GASOLINE TAX Pers 16,000	60 00	60 00
TOTAL TAXES	1148 93	683 56

INTEREST (TO WHOM PAID)	FEDERAL AND STATE
EVANGWOOD CONST CO - ON HOME	941 25
1ST NAT'L BANK & TRUST	56 80
TOTAL INTEREST	998 05

IBUTIONS	FEDERAL AND STATE
S	100 00
RED CROSS $	
EALS $ MARCH OF DIMES $	75 00
COMMUNITY CHEST $	
$	
ONTRIBUTIONS - FEDERAL	175 00
L CONTRIBUTIONS	
NTRIBUTIONS - STATE	175 00

MISCELLANEOUS DEDUCTIONS	FEDERAL AND STATE
SAFE DEPOSIT BOX FEES	7 00
INCOME PROD. DUES AND SUBSCRIPTIONS	
INCOME TAX RETURN PREPARATION	25 00
ALIMONY (SCHEDULE ATTACHED)	
SPECIAL UNIFORMS AND LAUNDRY	
SMALL TOOLS	
CASUALTY LOSSES (SCHEDULE ATTACHED)	
TOTAL FEDERAL MISCELLANEOUS	32 00
AND TRAVEL EXPENSES (SCH. ATTACHED)	
TOTAL STATE MISCELLANEOUS	32 00
TOTAL DEDUCTION THIS SCHED. (STATE) ▶	2564 [illegible]
TOTAL DEDUCTION THIS SCHED. (FEDERAL) ▶	3030 [illegible]

D. 120
UCENT FORMS CO.

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R.D.O.R. Gardner
NAME

TAXABLE YEAR ENDED 12/31/67

| | | |

SCHEDULE C-3 (Form 1040)
U.S. Treasury Department
Internal Revenue Service

Computation of Social Security Self-Employment Tax

Attach this schedule to your Income tax return, Form 1040
See Instructions on page 2

1967

▷ If you had wages, including tips, of $6,600 or more which were subject to social security taxes, do not fill in this page.
▶ Complete only one Schedule C-3; if you had more than one business, combine profits (or losses) from all of your businesses on this Schedule.
▷ Each self-employed person must file a separate schedule.

NAME AND ADDRESS (as shown on page 1 of Form 1040)
EDNA GARNER - 750 W. MAIN C.T. - UPLAND, CALIF.

NAME OF SELF EMPLOYED PERSON (as shown on social security card)
ROY D. GARNER

Social Security Number
561-30-2257

1	Net profit (or loss) shown in Schedule C (Form 1040), line 27 (Enter combined amount if more than one business)	< 12,944 41 >	
2	Add to net profit (or subtract from net loss) losses of business property shown in Schedule C, line 23		< 12,944 41 >
3	Total (or difference)		
4	Net income (or loss) from excluded services or sources included on line 3. Specify excluded services or sources		
5	Net earnings (or loss) from self-employment—		< 12,944 41 >
	(a) From business (line 3 less any amount on line 4)		
	(b) From partnerships, joint ventures, etc. (other than farming)		
	(c) From service as a minister, member of a religious order, or a Christian Science practitioner. Enter only if you have filed or are filing Form 2031		
	(d) From farming reported on line 2 (or line 3 if option used), separate Schedule F-1 (Form 1040)		
	(e) From service with a foreign government or international orgsnization		
6	Total net earnings (or loss) from self-employment reported on line 5. Enter here and in item F below (If line 6 is under $400, you are not subject to self-employment tax. Do not fill in rest of page.)		< 12,944 41 >
7	The largest amount of combined wages and self-employment earnings subject to social security tax is	$ 6,600 00	
8	(a) Total "F.I.C.A." wages as indicated on Form W-2		
	(b) Unreported tips, if any, subject to F.I.C.A. tax from Form 4137, line 9		
	(c) Total of lines 8(a) and 8(b). Enter here and in Item G below		
9	Balance (subtract line 8(c) from line 7)		
10	Self-employment income—line 6 or 9, whichever is smaller. Enter here and in item H, below		
11	Self-employment tax—If line 10 is $6,600, enter $422.40; if less, multiply the amount on line 10 by 6.4%. Enter this amount here and on page 1, line 15, Form 1040		

Do not detach — Schedule C-3 (Form 1040)

Important.—The amounts reported on the form below are for your social security account. This account is used in figuring any benefits, based on your earnings, payable to you, your dependents, and your survivors. Fill in each item accurately and completely.

SCHEDULE SE (Form 1040)
U.S. Treasury Department
Internal Revenue Service

U.S. Report of Self-Employment Income

For crediting to your social security account

1967

Indicate year covered by this return (even though income was received only in part of year):

A Calendar year 1967 [ ]; or other taxable year beginning ..... 1967, ending .....
If less than 12 months, was short year due to (a) [ ] Death, or (b) [ ] Change in accounting period, or (c) [ ] Other.

B BUSINESS ACTIVITIES SUBJECT TO SELF-EMPLOYMENT TAX (Grocery store, restaurant, etc.)

C BUSINESS ADDRESS (number and street, city or post office, State, ZIP code)

D SOCIAL SECURITY NUMBER OF PERSON NAMED IN ITEM E BELOW ▷

E PRINT OR TYPE NAME OF SELF EMPLOYED PERSON AS SHOWN ON SOCIAL SECURITY CARD

PRINT OR TYPE HOME ADDRESS (number and street or rural route)

(City or post office, State, and ZIP code)

PLEASE DO NOT WRITE IN THIS SPACE

F ENTER AMOUNT FROM LINE 6 $

G ENTER AMOUNT FROM LINE 8(c) IF ANY $

H ENTER AMOUNT

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952121203078 -7

1040 U.S. Individual Income Tax Return

For the year January 1–December 31, 1966, or other taxable year beginning ..... 19..., ending ..... 19...

U.S. Treasury Department—Internal Revenue Service

1966

Please print or type

First name and initial (if joint return, use first names and middle initials of both)	Last name	Your social security number (Husband's, if joint return)
Roy D. & Romona	Garner	565 | 34 | 2357
Home address (Number and street or rural route) 754 West Azure Court		Your occupation Horseman
City, town or post office, and State Upland, California ZIP code 91786		Wife's number, if joint return 562 | 30 | 6316
A Enter the name and address used on your return for 1965 (if the same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1965 names and addresses. None		Wife's occupation Housewife
Your present employer and address Self		
Wife's present employer and address, if joint return		

Filing Status—check only one:

1a ☐ Single
1b ☒ Married filing joint return (even if only one had income)
1c ☐ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number.
1d ☐ Unmarried Head of Household
1e ☐ Surviving widow(er) with dependent child

Exemptions

	Regular	65 or over	Blind	
2a Yourself	☒	☐	☐	Enter number of exemptions checked ▶ 2
2b Wife	☒	☐	☐	

3a First names of your dependent children who lived with you Phyllis, John — Enter number ▶ 2

3b Number of other dependents (from page 2, Part I, line 3) — 0

4 Total exemptions claimed ▶ 4

Income	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation ▶		
If joint return, include all income of both husband and wife	6	Other income (from page 2, Part II, line 8) ▶	22,000	00
	7	Total (add lines 5 and 6) ▶	22,000	00
	8	Adjustments (from page 2, Part III, line 5)		
	9	Total income (subtract line 8 from line 7) ▶	22,000	00
Figure tax by using either 10 or 11	10	Tax Table—If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.		
Tax Computation	11	Tax Rate Schedule—		
	11a	If you itemize deductions, enter total from page 2, Part IV. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately). ▶	2,555	22
	11b	Subtract line 11a from line 9	19,444	23
	11c	Multiply total number of exemptions on line 4, above, by $600	2,400	00
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	12,044	23
Tax Credits Payments	12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see line 11) ▶	3,552	38
	13	Total credits (from page 2, Part V, line 5) ▶		
	14a	Income tax (subtract line 13 from line 12)	3,552	38
	14b	Tax from recomputing prior year investment credit (attach statement)		
	15	Self-employment tax (Schedule C-3 or F-1) ▶		
	16	Total tax (add lines 14a, 14b, and 15) ▶	3,552	38
	17	Total Federal income tax withheld (attach Forms W-2) ▶		
	18	1966 Estimated tax payments (include 1965 overpayment allowed as a credit) ▶ 1,704 09		
	19	Excess F.I.C.A. Tax Withheld (two or more employers—see page 5 of inst.) ▶		
	20	Nonhighway Federal gasoline tax—Form 4136, Reg. Inv.—Form 2439		
	21	Total (add lines 17, 18, 19, and 20) Exception #1 Form 2210	1,704	09
Tax Due or Refund	22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return ▶	1,848	29
	23	If payments (line 21) are larger than tax (line 16), enter Overpayment ▶		
	24	Amount of line 23 you wish credited to 1967 Estimated Tax		
	25	Subtract line 24 from 23. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only		

Attach Check or Money Order here

Attach Copy 3 of Form W-2 here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ▶ X Roy D. Garner Romona Garner

If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income. Date

Sign here ▶ Gene Porter

Signature of preparer other than taxpayer. GENE PORTER CERTIFIED PUBLIC ACCOUNTANT Date 4-13-67

Address 1047 W. 6th Street

TRADE FORMS CO. 650—16—78361-9

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PART I. Exemptions (Complete only for dependents claimed on line 3b, page 1)

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Number of months lived in your home. If born or died during year write "B" or "D"	(d) If 4 dependents and less income of $600 or more	(e) Amount you provided for dependent's support. If 100% write "ALL"	(f) Amount contributed by dependent including dependent's own income
1				$	$
2					
3 Total number of dependents listed above. Enter here and on page 1, line 3b . . . . . ▶▶					

PART II. Income from sources other than wages, etc.

1a Dividends and other distributions on stock (Name of payer—write (H), (W), (J), for stock held by husband, wife, or jointly) .....

Total line 1a . . . . . ▶▶

1b Exclusion (see instructions)

1c Capital gain distributions .

1d Nontaxable distributions .

1e Total lines 1b, 1c, and 1d . . . . .

1f Taxable dividends (line 1a less line 1e—not less than zero) . . . . . ▶▶

2 Interest (name of payer)

2a Earnings from savings and loan assoc., mutual savings banks, credit unions, etc. .....

Total line 2a

2b Interest on bank deposits (other than mutual savings) .....

Total line 2b

2c Other interest (bonds, etc.) .....

Total line 2c

2d Total interest income (lines 2a, 2b, & 2c) ▶▶

3 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (Sch. B)

4 Business income (Schedule C) . . . .

5 Sale or exchange of property (Schedule D).

6 Farm income (Schedule F) . . . . .

7 Miscellaneous income (state nature)
WAGERING INCOME (H)
22,000.00 — 22,000 00

Total line 7 ▶▶ — 22,000 00

8 TOTAL (add lines 1f through 7. Enter here and on page 1, line 6) . . . . ▶▶ — 22,000 00

PART III. Adjustments

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement) .

2 Moving expenses (attach Form 3903) . .

3 Employee business expense (attach Form 2106 or other statement) . . . . .

4 Payments by self-employed persons to retirement plans, etc. (attach Form [illegible])

PART IV. Itemized deductions—Use only if you do not use tax table or standard deduction.

Medical and dental expense (not compensated by insurance or otherwise)—Attach itemized list. If 65 or over see instructions.

1 Total cost of medicine and drugs . . .

2 Enter 1% of line 9, page 1 . . . . .

3 Subtract line 2 from line 1 . . . . .

4 Other medical, dental expenses (include hospital insurance premiums) . . . .

5 Total (add lines 3 and 4) . . . . . .

6 Enter 3% of line 9, page 1 . . . . . .

7 Subtract line 6 from line 5; see page 8 of instructions for maximum limitation ▶▶

Contributions.—Cash—including checks, money orders, etc. (itemize) .....

1 Total cash contributions . . . . . .

2 Other than cash (see instructions for required statement). Enter total of such items here.

3 Carryover from prior years (see page 8 of instr.).

4 Total contributions (add lines 1, 2, and 3—see instructions for limitation) . . ▶▶ — 1750 00

Taxes.—Real estate . . . . . .

State and local gasoline . . . . . .

General sales (see page 15 of instructions) .

State and local income . . . . . .

Personal property . . . . . .

SCH #1 ATTACHED Total taxes ▶▶ — 8875

Interest expense.—Home Mortgage . . .

Other (itemize) .....

SCH #1 ATTACHED

Total interest expense ▶▶ — 14490

Miscellaneous deductions.—(see page 9 of instructions) .....

SCH #1 ATTACHED

Total Miscellaneous ▶▶ — 3200

TOTAL DEDUCTIONS (for page 1, line 11a) ▶ — 25565 00

PART V. Credits

1 Retirement income credit (Schedule R) .

2 [illegible]

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NAME R.D. & R. GARNER

TAXABLE YEAR ENDED 12/31/66

SCHEDULE OF DEDUCTIONS

MEDICAL EXPENSES	FEDERAL	STATE
DRUGS AND MEDICINES		
LESS % OF ADJ. GROSS		
NET DRUGS AND MEDICINES		
DOCTORS AND DENTISTS		
NURSES		
HOSPITALS		
AMBULANCES		
HEALTH AND ACCIDENT INS.		
TRAVEL FOR MED. TREATMENT		
HEARING AID, GLASSES, ETC.		
TOTAL MEDICAL EXPENSES		
LESS - INS. REIMBURSEMENTS		
% (F) % (S) ADJ. GROSS INCOME		
NET MEDICAL DEDUCTIONS		

TAXES	FEDERAL	STATE
AUTO	XXX XX	
PERSONAL PROPERTY TAX 40-18	122 00	122 00
REAL ESTATE TAX	429 19	429 19
STATE DISABILITY INSURANCE		
SALES TAX		
STATE INCOME TAX	225 00	225 00
TRANSPORTATION TAX	15 36	XXX XX
TELEPHONE AND TEL. TAX	XXX XX	
AMUSEMENT TAX	XXX XX	
GASOLINE TAX	XXX XX	
	72 00	48 00
TOTAL TAXES	863 55	824 19

INTEREST (TO WHOM PAID)	FEDERAL AND STATE
SUNSET MANOR CO - ON HOME	965 83
FIRST NAT'L BANK & TRUST	493 19
TOTAL INTEREST	1459 02

CONTRIBUTIONS	FEDERAL AND STATE
CHURCHES	100 00
SALV. ARMY $ / RED CROSS $	
MAS AND WATERSEALS $ / MARCH OF DIMES $	
CANCER $ / COMMUNITY CHEST $	75 00
UNITED CRUSADE $	
TOTAL CONTRIBUTIONS - FEDERAL	175 00
POLITICAL CONTRIBUTIONS	
TOTAL CONTRIBUTIONS - STATE	175 00

MISCELLANEOUS DEDUCTIONS	FEDERAL AND STATE
SAFE DEPOSIT BOX FEES	7 00
INCOME PROD. DUES AND SUBSCRIPTIONS	
INCOME TAX RETURN PREPARATION	25 00
ALIMONY (SCHEDULE ATTACHED)	
SPECIAL UNIFORMS AND LAUNDRY	
SMALL TOOLS	
CASUALTY LOSSES (SCHEDULE ATTACHED)	
TOTAL FEDERAL MISCELLANEOUS	32 00
ADD TRAVEL EXPENSES (SCH. ATTACHED)	
TOTAL STATE MISCELLANEOUS	32 00
TOTAL DEDUCTION THIS SCHED. (STATE)	2540 21
TOTAL DEDUCTION THIS SCHED. (FEDERAL)	

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Form 1040 U.S. Individual Income Tax Return 1965

for the year January 1 December 31, 1965 or other taxable year beginning ..... , 1965, ending ..... , 19 — US Treasury Department—Internal Revenue Service

▼ First name and initial (If joint return, use first names and middle initials of both) | Last name | Your social security number (Husband's if joint return)

ROY D. & ROWENA | GARNER | 565 34 2357

Home address (Number and street or rural route)

754 W. AZURE CT.

City, town or post office, and State | Postal ZIP code

UPLAND, CALIFORNIA

Your occupation & present employer

PROF. GAMBLER
SELF

Wife's number, if joint return

262 30 6316

Wife's occupation & present employer

HOUSEWIFE

Enter the name and address used on your return for 19[illegible] (if the same as above, write "Same"). If none filed, give reason. If changing from separate to joint or joint to separate returns, enter 1964 names and addresses.

SAME

▲ Attach Copy B of Form W-2 here

Filing Status —check one:

1a ☐ Single

1b ☒ Married filing joint return (even if only one had income)

1c ☐ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number.

1d ☐ Unmarried Head of Household

1e ☐ Surviving widow (er) with dependent child

Exemptions

	Regular	65 or over	Blind	
2a Yourself	☒	☐	☐	Enter number of exemptions checked ▶▶▶ 2
2b Wife	☒	☐	☐	

3a First names of your dependent children who lived with you. PHYLLIS, JOHN — Enter number ▶▶▶ 2

3b Number of other dependents (from page 2 Part I, line 3) —

4 Total exemptions claimed ▶▶▶ 4

Income If joint return, include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation ▶	164 60
	6	Other income (from page 2, Part II, line 9) ▶	8022 00
	7	Total (add lines 5 and 6) ▶	8,206 60
	8	Adjustments (from page 2, Part III, line 5) ▶	
	9	Total income (subtract line 8 from line 7) ▶	8,206 60

▲ Please print or type

Figure tax by using either 10 or 11

Tax Computation	10	Tax Table—If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11 a, b, c, or d. Enter tax on line 12.	
	11	Tax Rate Schedule—	
	11a	If you itemize deductions, enter total from page 2, Part IV If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. The deduction computed under (1) or (2) is limited to $1,000 ($500 if married and filing separate return). ▶	2,683 58
	11b	Subtract line 11a from line 9	5,523 02
	11c	Multiply total number of exemptions on line 4, above, by $600	2,400 00
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	3,123 02
Tax Credits Payments	12	Tax (from either Tax Table, see line 10, or Tax Rate Schedule, see line 11) ▶	470 91
	13	Total credits (from page 2, Part V, line 5) ▶	
	14	Income tax (subtract line 13 from line 12)	470 91
	15	Self-employment tax (Schedule C-3 or F-1) ▶	
	16	Total tax (add lines 14 and 15) ▶	470 91
If either you or your wife worked for more than one employer see page 5 of instructions	17a	Total Federal income tax withheld (attach Forms W-2) ▶	
	17b	1965 Estimated tax payments LOS ANGELES, CALIF. ▶ 2,175 00 (Include 1964 overpayment allowed as a credit) (Office where paid)	
	17c	Total (add lines 17a and 17b)	2,175 00
Tax Due or Refund	18	If payments (line 17c) are less than tax (line 16), enter Balance Due. Pay in full with this return ▶	
	19	If payments (line 17c) are larger than tax (line 16) enter Overpayment ▶▶▶	1,704 09
	20	Amount of line 19 you wish credited to 1966 Estimated Tax	1,704 09
	21	Subtract line 20 from 19. Apply to: ☐ U.S. Savings Bonds, with excess refunded or ☐ Refund only	

▲ Attach Check or Money Order here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Sign here ▶ X Roy D. Garner X Rowena Garner Date 1/15/66

If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

Sign here ▶ Paul Goldberg Date 3/6/66

Signature of preparer other than taxpayer

GENE PORTER
ACCREDITED PUBLIC ACCOUNTANT
1047 W. 6th Street
ONTARIO, CALIFORNIA

[illegible] 1965 FORM 1040 (1)

Exemptions Complete only for dependents claimed on line 3b, page 1

(a) NAME (If more space is needed attach schedule)	(b) Relationship	(c) Months lived in your home. If born or died during year write "B" or "D"	(d) Did dependent have income of $1,000 or more?	(e) Amount YOU provided for dependent's support, if 100% write "ALL"	(f) Amount provided by Other(s) including dependent
1				$	$
2					

3 Total number of dependents listed above. Enter here and on page 1, line 3b ▶▶▶▶

PART II. Income from all sources other than wages, salaries, etc.

Dividends and Other Distributions

A Gross amount		
B Nontaxable and capital gain distributions		
C Subtract item B from item A (See Schedule B if over $400)		

Explanation of C (Include information for stock held by husband, wife or jointly)

1a Qualifying dividends (name of payer)

Total qualifying

1b Subtract $100. If joint return see instructions

1c Balance (but not less than zero)

1d Nonqualifying dividends (name of payer)

Total nonqualifying

2 Total dividends (add lines 1c and 1d) ▶▶▶▶

3 Interest (name of payer)

Total interest income ▶▶▶▶

4 Pensions and annuities, rents and royalties, partnerships, & estates or trusts (Schedule E)

5 Business income (Schedule C)

6 Sale or exchange of property (Schedule D)

7 Farm income (Schedule F)

8 Other sources (state nature)

GAMBLING 8,022.00

Total other sources ▶▶▶▶ 8,022.00

9 Add lines 2 through 8. Enter here and on page 1 line 6. ▶▶▶▶ 8,022.00

PART III. Adjustments

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement)

2 Moving expenses (attach Form 3903)

3 Employee business expense (attach Form 2106 or other statement)

4 Payments by self employed persons to retirement plans, etc. (attach Form 2950SE)

5 Total adjustments (lines 1 through 4). Enter here and on page 1, line 8

EXPENSE ACCOUNT INFORMATION—If you had an expense allowance or charged expenses to your employer, check here ☐ and see page 7 of instructions.

PART IV. Itemized deductions (Use only if you do not use tax table or standard deduction.

Medical and dental expense.—Attach itemized list. Do not enter any expense compensated by insurance or otherwise. NOTE: If you or your wife are 65 or over, or if other than dependent parent 65 or over, see page 8 of instructions for possible larger deduction:

1 Enter excess, if any, of medicine and drugs over 1% of line 9, page 1 (see page 8 of instructions)

2 Other medical, dental expenses (include hospital insurance premiums)

3 Total (add lines 1 and 2)

4 Enter 3% of line 9, page 1 (see page 8 of instructions) SCH #1 ATTACHED

5 Subtract line 4 from line 3, see page 8 of instructions for maximum limitation ▶ 391 53

Contributions.—Cash—including checks, money orders, etc. (itemize)

1 Total cash contributions

2 Other than cash (see instructions for required statement) Enter total of such items here SCH #1 ATTACHED

3 Total contributions (add lines 1 and 2—see instructions for limitations) ▶▶▶▶ 3000

Taxes.—Real estate $

State and local gasoline $

General sales $

State and local income $

Personal property $

SCH #1 ATTACHED Total taxes ▶▶▶▶ 1,115 48

Interest expense.—Home mortgage $

Other (itemize)

SCH #1 ATTACHED

Total interest expense ▶▶▶▶ 1,107 72

Other deductions.—(see page 9 of instructions)

SCH #1 ATTACHED

Total other deductions ▶▶▶▶ 3685

TOTAL DEDUCTIONS (for page 1, line 11a) ▶ 2,683 58

PART V. Credits

1 Retirement income credit (Schedule R)

2 Investment credit (Form 3468)

3 Foreign tax credit (Form 1116)

4 Tax-free covenant bonds credit

5 Total credits (add lines 1 through 4). Enter here and on page 1, line 13

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CALENDAR YEAR 19 65

ADDRESS _____ SOC. SEC. NO. _____

DEDUCTION SCHEDULE

MEDICAL [ ] OVER 65	FEDERAL	STATE
DRUGS	100 00	
LESS 1% A.G.I.	X2 27	
BALANCE	17 73	
DR. Rayneiy MD	15 00	
DR. [illegible] DDS	20 00	
DR. Sendit MD	42 50	
DR. Cavonaugh MD	48 00	
DR.		
DR.		
DR.		
DR.		
DR.		
LAXATORIES	27 00	
TRAVEL FOR MED. 5¢	10 20	
HEALTH & ACCIDENT INS.	243 50	
GLASSES	213 50	
MEDICAL EXPENSES	634 73	
LESS REIMBURSED BY INS.	ABOVE NOT RECD	
	634 73	
LESS 3% ADJ. GROSS INC.	240 20	
TOTAL MEDICAL DED.	394 53	371 53

TAXES	FEDERAL	STATE
REAL ESTATE	405 97	405 97
STATE & LOCAL GASOLINE 500×7.4¢	37 00	37 00
GENERAL SALES	92 00	92 00
STATE & LOCAL INCOME	232 51	XXXX
PERSONAL PROPERTY		
PERSONAL PROPERTY AUTO 96-16	80 00	80 00
STATE-AUTO	268 00	268 00
TOTAL TAXES	1115 97	882 97

INTEREST (TO WHOM PAID)		
MORTGAGE		
SUNSET MANOR Co.	987 22	
INSTALLMENT LOANS		
1ST NAT'L BANK OF CYCLO	121 50	
DEPARTMENT STORES		
TOTAL INTEREST	1108 72	1108 72

CONTRIBUTIONS

CHURCHES		
PARTNERSHIP SHARE		
GIRL BOY SCOUTS		
COMMUNITY CHEST / UNITED FUND		
RELIEF FUND	30 00	
RED CROSS		
XMAS & EASTER SEALS		
MARCH OF DIMES		
CANCER FUND		
MISC. ORGANIZED CHARITIES		
POLITICAL CONTRIBUTIONS	XXXXX	
OTHER THAN CASH		
TOTAL CONTRIBUTIONS	30 00	30 00

OTHER DEDUCTIONS

UNION / PROFESSIONAL DUES		
SMALL TOOLS AND SUPPLIES		
UNIFORMS / PROTEC. CLOTHING		
LAUNDRY AND CLEANING		
AUTO USE		
INCOME TAX PREPARATION	35 00	
CHILD CARE (SCHEDULE)		
ALIMONY (SCHEDULE)		
INVESTMENT COUNSEL & PUBS (SCHEDULE)		
STATE DISABILITY INS.	1 85	
TOTAL OTHER DED	36 85	36 85

CASUALTY LOSS / EXPLANATION

TOTAL LOSS		
LESS INSURANCE REIMBURSEMENTS		
LESS EXCLUSIONS		
TOTAL		
	FEDERAL	STATE
TOTAL DEDUCTIONS	2,603 31	2,[illegible]